

THIRTEENTH DAY

(Thursday, June 27, 1968)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Aikin	Herring
Bates	Hightower
Bernal	Jordan
Berry	Kennard
Blanchard	Mauzy
Brooks	Moore
Christie	Patman
Cole	Ratliff
Connally	Reagan
Creighton	Schwartz
Grover	Strong
Hall	Wade
Hardeman	Watson
Harrington	Wilson
Harris	Word
Hazlewood	

A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation.

On motion of Senator Aikin and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Senate Resolution 162

Senator Moore offered the following resolution:

Whereas, It is the pleasure of the Texas Senate today to welcome to our midst, with all privileges of the floor, Mr. and Mrs. Marvin W. Smith of Boca Raton, Florida, and two grandsons; Mr. Smith is the brother of Mrs. Grady Hazlewood; and

Whereas, Now retired, Mr. Smith is a distinguished graduate in electrical engineering of Texas A&M University; he joined the staff of Westinghouse as a student engineer and worked his way up to vice president in charge of engineering; he later became president of Westinghouse's Baldwin Lima Corporation in Philadelphia and is known as one of the outstanding industrialists in the nation; and

Whereas, Although Mr. Smith has received many honors, his most cherished is the honorary degree which

was awarded to him as a distinguished alumnus of Texas A&M University, indicative that he has retained his love for his alma mater and his native state in the tradition of all true Texans; and

Whereas, With Mr. Smith today, besides his sister, Andrine Hazlewood, are Mr. Smith's wife, Lucille, also a native Texan, and two grandsons, Marvin Smith III, of New Jersey, and Gordon Smith, of Ohio, who are receiving a firsthand introduction to their Texas heritage; on leaving Austin, the Smiths will take the young men to visit HemisFair and then East Texas, particularly Smith County, which was named for their illustrious great-grandparents, General James Smith and his wife, Hanna Parker Smith; and

Whereas, The Senate of the 60th Legislature, 1st Called Session, wishes to recognize Mr. and Mrs. Marvin W. Smith and their grandsons; now, therefore, be it

Resolved, That the Senate of Texas extend greetings to the Marvin W. Smith family as they tour Texas and express appreciation to Mr. Smith for his outstanding accomplishments, which reflect honor on the State of Texas and its educational system; and, be it further

Resolved, That official copies of this Resolution, bearing the Seal of the Senate, be prepared for Mr. and Mrs. Marvin W. Smith and for each of their grandsons, Marvin W. Smith III and Gordon Smith.

The resolution was read and was adopted.

Senate Bills on First Reading

The following bills were introduced, read first time and referred to the Committees indicated:

By Senator Schwartz:

S. B. No. 11, A bill to be entitled "An Act creating West Brazoria County Drainage District for the purpose of drainage of lands; requiring an election to confirm the creation of such district; providing that certain county officers of Brazoria County, Texas, shall perform certain duties and functions for said district and that the Commissioners Court of said county shall be the governing body of said district; prescribing its powers, duties and functions; provid-

ing that no bonds shall be issued nor any tax levied without a vote of the electors qualified to vote at bond elections; providing for abolition of all existing drainage districts within the district hereby created; and declaring an emergency."

To the Committee on Water and Conservation.

By Senator Schwartz:

S. B. No. 12, A bill to be entitled "An Act creating the 181st Judicial District of Brazoria County; providing for its court and for the jurisdiction, terms, personnel, administration, and practice of the court; and declaring an emergency."

To the Committee on Legislative, Congressional and Judicial Districts.

By Senators Kennard, Creighton and Harris:

S. B. No. 13, A bill to be entitled "An Act defining terms, further defining the powers of public agencies and joint airport boards created to operate jointly owned public airports; granting additional powers to such boards and to public agencies, including powers relating to the financing of the joint airports of public agencies acting jointly, including authorizations and powers to participating public agencies and such boards to finance joint airports through the issuance of bonds payable from the sources specified in this Act and/or in joint airport agreements; enacting various provisions relating to such bonds; validating various provisions of joint airport agreements heretofore entered into by public agencies which provide for the construction of joint airports, the creation of joint airport boards and joint airport funds, and which make provision for the construction, operation and maintenance of such joint airports and for the protection of the financial credit and operational integrity of such funds and such boards; enacting other provisions relating to the subject; providing that this Act shall be cumulative; providing a savings clause; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Schwartz:

S. B. No. 14, A bill to be entitled "An Act validating all proceedings and acts of the governing bodies of

all cities and towns incorporated under the general laws of Texas; providing certain limitations as to the application of the Act; providing a saving clause; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Schwartz:

S. B. No. 15, A bill to be entitled "An Act excluding land from Galveston County Water Control and Improvement District No. 21 of Galveston County, Texas, finding proof of publication of notice and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Schwartz:

S. B. No. 16, A bill to be entitled "An Act validating Fort Bend County Water Control and Improvement District No. 2 and declaring it to be a validly existing and operating conservation and reclamation district under Section 59, Article XVI, Texas Constitution; validating the addition or annexation of lands to the District and the boundaries thereof; validating all governmental acts and proceedings; finding and determining that the lands and other property within said District are, and will be, benefitted by the District; providing that this Act shall not validate any act or proceeding which is the subject of litigation; containing other provisions relating to the subject; providing a severability clause; and declaring an emergency."

To the Committee on Water and Conservation.

By Senator Schwartz:

S. B. No. 17, A bill to be entitled "An Act validating Galveston County Water Control and Improvement District No. 1 and declaring it to be a validly existing and operating conservation and reclamation district under Section 59, Article XVI, Texas Constitution; validating the annexation of lands to the District, the exclusion of land therefrom and the boundaries thereof; validating all governmental acts and proceedings; validating its bonds; finding and determining that the lands and other property within said District are, and will be, benefitted by the District; pro-

viding that this Act shall not validate any act or proceeding which is the subject of litigation; containing other provisions relating to the subject; providing a severability clause; and declaring an emergency."

To the Committee on Water and Conservation.

By Senator Schwartz:

S. B. No. 18, A bill to be entitled "An Act amending S. B. No. 24, Chapter 6, Acts of the 41st Legislature, First Called Session, 1929, relating to 'Brazoria County Drainage District No. 3'; conferring the management and control of the District upon the Board of Commissioners; providing for the issuance of bonds and assessing, levying and collecting taxes; limiting the amount of outstanding bonds to 4½% of the assessed value of taxable property in the District; providing for the power to contract with the United States of America, the State of Texas and others and making provision for such contracts; providing that the Act prevails over any inconsistent general laws; providing for the power to borrow money; finding that the District will be carrying out an essential public function; finding that the requirements of Article 16, Section 59 of the Constitution have been accomplished; providing that the enactment of this Act is essential and necessary in the preservation and conservation of natural resources; enacting other provisions relating to subject; providing a severability clause; and declaring an emergency."

To the Committee on Water and Conservation.

By Senator Schwartz:

S. B. No. 19, A bill to be entitled "An Act creating and establishing a Conservation and Reclamation District under Article 16, Section 59 of the Constitution of Texas, to be known as 'Ridgemont Municipal Utility District'; defining the boundaries; determining and finding benefits to the land and other property within the District; finding that the boundaries of the District form a closure; conferring rights, powers, privileges, authorities and functions upon the District; providing for continuing supervision by the State through the Texas Water Rights Commission; providing that the District shall not

call a confirmation election; providing for a hearing for exclusion; providing that the District shall use the ad valorem plan of taxation; providing for the issuance of bonds; providing for a Board of Directors; providing for the use of public roadways, streets, alleys and public easements; providing that the District shall bear the expense of relocation of certain properties and facilities; providing for the power to contract with the United States of America, the State of Texas and others, and making provision for such contracts; providing for the power to borrow money; providing that Article 7880-77b, Vernon's Texas Civil Statutes, shall not be applicable to this District; providing that the bonds of the District are eligible investments; providing for the appointment of a depository and investment of surplus funds; providing for a system of accounts and an audit thereof; finding that the District will be carrying out an essential public function and providing that properties, purchases and bonds of the District are tax-free; providing that the Municipal Annexation Act is not applicable to the creation of the District; finding that the requirements of Article 16, Section 59 of the Constitution have been accomplished; providing that the enactment of this Act is essential and necessary in the preservation and conservation of natural resources; enacting other provisions related to the subject; providing a severability clause; and declaring an emergency."

To the Committee on Water and Conservation.

Address by the President of the Senate

The following is a statement read at the opening of the Senate at 10:30 a.m. Thursday, June 27, 1968, by Lieutenant Governor Preston Smith:

"The Chair requests the attention of the Senate for a brief review of what has transpired to date in the First Called Session of the 60th Legislature.

"Governor Connally called this session for the necessary purposes of making appropriations for fiscal 1969 and providing the revenue to cover them.

"This Senate, as well as the House, responded promptly to the call for appropriations. The Senate version

would require nearly \$140 million in additional revenue.

"The House of Representatives is required, under our State Constitution, to originate tax measures. The House of Representatives promptly faced up to that duty and by a vote of 91 to 56, sent to the Senate House Bill No. 2.

"Yesterday the Senate considered House Bill No. 2, as well as a couple of substitutes and a great many amendments. Every member of this Senate who wanted to suggest a change was permitted to do so. Many record votes were taken on nearly every conceivable subject. The Chair does not know what more could have been done to let every Senator express his own views and make his own record on these many issues.

"When all of this had been done, and House Bill No. 2 was offered for engrossment, this Senate rejected it by a vote of 18-13.

"Now—here's an appropriate question.

"Where do we stand on this, the 24th day of the Special Session?

"1. The Governor has done his duty by recommending a tax program.

"2. The House has done its duty by sending a tax bill to the Senate.

"3. The Senate has rejected the House Bill without substituting a tax plan of its own.

"As of this morning, the Senate has killed the tax bill.

"It has left Governor Connally no choice but to call a second Special Session at a cost to the taxpayers of this state of approximately half a million dollars.

"This Senate, then, has now left itself in the position of voting for appropriations and refusing to vote for the taxes to pay for them. This happens to be the classic example used to illustrate legislative irresponsibilities.

"The Chair stated at the beginning of this Session that it was essentially the Governor's session and that his program deserved full and respectful consideration.

"It seemed unnecessary to add that legislative responsibility did not end there—that having considered and rejected the Governor's program, it would become necessary for the Legislature to provide an alternative program.

"This is not the Governor's problem alone. It is our problem. As of now, this Senate has not contributed to a solution."

Vote on Passage to Third Reading of House Bill 2 Reconsidered

Senator Hall moved to reconsider the vote by which H. B. No. 2 failed to pass to third reading on yesterday (he having voted on the prevailing side).

Pending discussion of the motion to reconsider, Senator Harris occupied the Chair.

(President in the Chair.)

Question on the motion to reconsider, "Yeas" and "Nays" were demanded.

The motion to reconsider prevailed by the following vote:

Yeas—16

Aikin	Harris
Bates	Herring
Brooks	Hightower
Christie	Ratliff
Cole	Reagan
Grover	Strong
Hall	Watson
Hardeman	Word

Nays—15

Bernal	Kennard
Berry	Mauzy
Blanchard	Moore
Connally	Patman
Creighton	Schwartz
Harrington	Wade
Hazlewood	Wilson
Jordan	

House Bill 2 on Second Reading

The President laid before the Senate on its second reading and passage to third reading H. B. No. 2. (The bill having been read the second time on yesterday.)

Question—Shall H. B. No. 2 be passed to third reading?

Senator Hall offered the following amendment to the bill:

Amend House Bill No. 2 by striking all below the enacting clause and substituting the following:

"Section 1. Article 20.02, Title

122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

“Article 20.02. Imposition of Limited Sales Tax

“There is hereby imposed a limited sales tax at the rate of three per cent (3%) on the receipts from the sale at retail of all tangible personal property within this State.”

“Sec. 2. Subsection (A), Article 20.021, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

“Article 20.021. Method of Collection; Bracket System

“(A) Every retailer shall add the sales tax imposed by Article 20.02 of this Chapter to his sale price and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.16	No Tax
.17 to .49	\$.01
.50 to .83	.02
.84 to 1.16	.03
1.17 to 1.49	.04
1.50 to 1.83	.05

Provided, that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying three per cent (3%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax.

“When several articles or items of tangible personal property are purchased together and at the same time, the tax shall be computed on the total amount of the several items less the amount paid for any article or item of tangible personal property specifically exempt under the provisions of Article 20.04 of this Chapter.

“The use of tokens or stamps for

the purpose of collecting or of enforcing the collection of the tax imposed in this Chapter or for any other purpose in connection with such tax is prohibited.”

“Sec. 3. Article 20.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

“Article 20.03. Imposition and Rate of Use Tax.

“An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased, leased or rented from any retailer on or after September 1, 1961, for storage, use or other consumption in this State, at the rate of three per cent (3%) of the sales price of the property, or in the case of leases or rentals, of said lease or rental prices.

“(A) Liability for Use Tax: Extinguishment of Liability. Every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the tax. His liability is not extinguished until the tax has been paid to this State, except that a receipt from a retailer engaged in business in this State or from a retailer who is authorized by the Comptroller, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this Chapter relating to the use tax regarded as a retailer engaged in business in this State, given to the purchaser pursuant to paragraph (B) of this Article is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

“(B) Collection by Retailer: Purchaser's Receipt. Every retailer engaged in business in this State and selling, leasing or renting tangible personal property for storage use or other consumption in this State shall at the time of making the sale collect any use tax which may be due from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Comptroller.

“Retailer engaged in business in this State” as used in this Section (B) and the preceding Section (A) means and includes any of the following:

“(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.

“(2) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this State under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property.

“(C) Assumption, Absorption of Tax by Retailers, Unlawful Advertising. It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the tangible personal property sold, rented or leased, or that it or any part thereof will be refunded.

“(D) Unlawful Acts. Any person convicted of violating paragraphs (B) or (C) of this Article shall be guilty of a misdemeanor and shall suffer the penalties set forth in Article 20.12(D) of this Chapter.

“(E) Registration of Retailers. Every retailer selling, leasing or renting tangible personal property for storage, use or other consumption in this State shall register with the Comptroller and give:

“(1) The names and addresses of all agents operating in this State.

“(2) The location of all distribution or sales houses or offices or other places of business in this State.

“(3) Such other information as the Comptroller may require.

“(F) Presumption of Purchase for Use: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the use tax and of the duty to collect the use tax, it shall be presumed that tangible personal property sold, leased or rented by any person for delivery in this State is sold, leased or rented for storage, use or other consumption in this State until the contrary is established. The burden of proving the contrary is upon the person who sells, leases or rents the property unless he takes from the purchaser a certificate to the effect

that the tangible personal property is purchased for resale, leasing or renting.

“(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property. A resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be so sold, leased or rented or will be used for some other purpose.

“(H) Form and Contents of Resale Certificate.

“(1) The certificate shall:

“(a) Be signed and bear the name and address of the purchaser.

“(b) Indicate the number of the permit issued to the purchaser or that an application for such permit is pending before the Comptroller.

“(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

“(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

“(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental, in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

“(J) Improper Use of Resale Certificates. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

“(K) Resale Certificate: Com-

mingling Fungible Goods. If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such a similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods covered by the resale certificate until a quantity of commingled goods equal to the quantity of such goods so commingled has been sold.

"(L) Presumption of Purchase from Retailer. It shall be further presumed in the absence of evidence to the contrary, that tangible personal property shipped or brought to this State by the purchaser after the effective date of this Chapter was purchased from a retailer on or after the effective date of this Chapter for storage, use or other consumption in this State."

"Sec. 4. Subsection (B), Article 20.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

"(B) Method Retailer Is to Use in Computing Tax. The limited sales tax levied under Article 20.02 hereof shall be computed and paid to the Comptroller on the basis of three per cent (3%) of all receipts from the total sales of taxable tangible personal property sold by such retailer; provided any retailer who can establish to the satisfaction of the Comptroller that fifty per cent (50%) or more of his receipts from the sale of tangible personal property arise from individual transactions where the total sales price is sixteen cents (16¢) or less may exclude the receipts from such sales when reporting and paying the tax imposed by Article 20.02 of this Chapter. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the Limited Sales, Excise and

Use Tax and the retailer shall be subject to assessment for back taxes, penalties and interest as provided for in this Chapter.

"Sec. 5. Subdivision 2, Subsection (K), Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes, is amended to read as follows:

"(2) When such Limited Sales, Excise and Use Tax imposed by the State of Texas shall be at the rate of three percent (3%) on the receipts from the sale at retail of all tangible personal property within this State which is subject to such tax, and the Local Sales and Use Tax imposed in any city under authority of this Act shall be at the rate of one percent (1%) on the receipts from the sale of all tangible personal property within such city which is subject to such tax, the total gross rate of such combined taxes in such city shall be at the rate of four percent (4%) on the receipts from the sale of all tangible personal property within such city which is subject to such taxes. When the sale price shall involve a fraction of a dollar, the taxes shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.12	No Tax
.13 to .37	\$.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04
1.13 to 1.37	.05
1.38 to 1.62	.06
1.63 to 1.87	.07

Provided that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four percent (4%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax."

"Sec. 6. Section (T) of Article 20.04, Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read:

"(T) Vending Machine Sales.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale of tangible per-

sonal property or taxable services when sold through a coin-operated vending machine for a total consideration of sixteen cents (16¢) or less.

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale of telephone and telegraph service paid for by inserting coins in coin-operated telephones."

"Sec. 7. Written Contracts and Bids Executed Prior to the Effective Date of this Act.

There are exempted from the additional one percent tax imposed by Section 1 of this Act the receipts from the sale, use or rental of, and the storage, use or other consumption in this state of, tangible personal property (i) used for the performance of a written contract entered into prior to January 1, 1969, or (ii) pursuant to the obligation of a bid or bids submitted prior to January 1, 1969, which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of a tax imposed by this Act. The exemption provided by this section shall have no effect on the receipts from the sale, use or rental of, and the storage, use or other consumption of tangible personal property in this state after August 31, 1971, and the same will be taxable if it is not otherwise exempt.

Provided, however, that notice of such contract or bid by reason of which an exclusion is claimed under this section must be given by the taxpayer to the comptroller on or before the lapse of 60 days from the effective date of this Act.

Sec. 8. Section (B), Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(B) Items Under Existing Statutes.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental, production or distribution, or the storage, use or other consumption in this State of:

"(a) oil as taxed under the provisions of Chapter 4 of this Title;

"(b) sulphur as taxed under the provisions of Chapter 5 of this Title;

"(c) motor fuel as defined, taxed or exempted under the provisions of Chapter 9 of this Title;

"(d) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title; and

"(e) cement as taxed under the provisions of Chapter 18 of this Title;

"(f) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

"(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of telephone and telegraph service."

"Sec. 9. Sections (1) and (2) of Article 6.01, Chapter 6, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, are amended to read:

"(1) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to three percent (3%) of the total consideration paid or to be paid for said motor vehicle.

"(2) There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside this State and brought into this State for use upon the public highways by any person, firm or corporation who is a resident of this State or who is domiciled or doing business in this State. The tax imposed by this subsection shall be equal to three percent (3%) of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm, or corporation operating said motor vehicle upon the public highways of this State."

"Sec. 10. Subsection B of Article 6.03, Chapter 6, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read:

"(B) Retail Sale. The term "retail sale" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use and shall not include those operated under and in accordance with

the terms of Article 6686, Revised Civil Statutes of Texas, 1925, as amended.'"

Sec. 11. Section 15(e) of Article I of the Texas Liquor Control Act, Chapter 467, Acts of the 44th Legislature, 2nd Called Session, 1935, as last amended by Section 1, Chapter 262, Acts of the 57th Legislature, Regular Session, 1961 (Article 666-15(e), Vernon's Texas Penal Code), is amended by adding a new Section (12) to read:

"(12) In addition to all other taxes levied and assessed by the Texas Liquor Control Act, there is hereby levied and assessed an occupation tax of ten percent (10%) of the gross amount of money received by the holder of a Private Club Registration Permit, or any of its officers, directors, agents, servants or employees, from the serving or storing for consumption on the premises where stored distilled spirits and wine containing alcohol in excess of fourteen percent (14%) by volume. The holder of the Private Club Registration Permit, and any of its officers or directors, shall be liable for this tax.

"Except as expressly provided herein, the method and manner and time of payment of the taxes levied and assessed herein shall be determined by rule and regulation of the Board. The Board shall, by rule and regulation, determine the records to be made and kept, the reports to be submitted, the bonds to be made, and the procedures to be followed in order to assure that the taxes levied and assessed above are paid and collected.

"Any person who fails to pay the taxes levied and assessed above in the method, manner or time prescribed by rule or regulation of the Board, or who fails to make and keep records, to make and submit reports, to maintain bond, or to follow the procedures required by rule and regulation of the Board shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than One Hundred Dollars (\$100) or more than One Thousand Dollars (\$1,000), or by imprisonment in jail for not less than thirty (30) days nor more than one (1) year.

"All taxes collected under this Section shall be deposited in the State Treasury to the credit of the General Revenue Fund."

Sec. 12. Article 21.01, Title 122A, Taxation—General, Revised Civil Stat-

utes of Texas, 1925, is amended to read as follows:

"Article 21.01. REPORTS REQUIRED

"Every person, firm, association of persons or corporation owning or operating any place of amusement or business which charges a price or fee for admission on which a tax is imposed by this Chapter shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter on any admission collected for dances, moving pictures, operas, plays and musical entertainments all the proceeds of which inure exclusively to the benefit of State, religious, educational or charitable institutions, societies, or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual, or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock, or for admission to any rodeo; and provided further, that an operator of entertainments such as motion pictures, operas, plays and like amusements where the admission charge is less than One Dollar and Five Cents (\$1.05) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Chapter. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided."

Sec. 13. Article 21.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.02. TAX IMPOSED

"(1) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays, concerts, musical shows, skating exhibitions and shows, skating rinks open to skating by patrons, and like amusements, where the admission charged is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

"(2) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, boat racing, and like mechanical or animal contests and exhibitions.

"(3) There is hereby levied on the amounts paid for admission by season ticket, subscription, or lease for admission to any place, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place would be subject to taxation under the provisions of this Chapter.

"(4) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected."

Sec. 14. Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended by adding Chapter 26 to read as follows:

"CHAPTER 26**"ENTERTAINMENT TAX****"Article 26.01. TAX IMPOSED**

"(a) There is hereby imposed an entertainment tax at the rate of five percent on receipts collected by any person, except as specifically exempted under this chapter, which are collected as

"(1) a charge for admission to any sporting event or athletic contest in which the participants are professionals or receive monetary compensation for participating, including baseball, football, basketball, soccer, hockey, rugby, polo, boxing, wrestling, and track and field meets; or

"(2) a charge denominated as an admission charge shall include a cover charge, service charge and any

other charge or charges by any other name when made by a dance hall, private club, night-club, bottle club, lounge, cabaret, tavern, dinner club, or dining room when the charge is made for the privilege of any use of the facilities of the person making the charge in order to consume food or beverages, to dance, or to view a floor show or other entertainment; or

"(3) a charge for admission to any natural or man-made phenomena, object or structure or curiosity or interest, such as caverns, amusement parks, buildings, ruins and guided tours of such natural or man-made phenomena, object, structure, curiosity or interest, and shall include charges made for the privilege of participating in or using any of the additional amusements therein or connected therewith.

"(b) 'Receipts' or 'receipts from admission' as used in this chapter means the total consideration received by a taxpayer as defined in Article 26.03 of this chapter, whether the consideration is paid as dues; under the terms of a subscription, membership or other card, season or other ticket, or lease for admission; or without the delivery or use of any receipt, ticket, or other written instrument or device. 'Receipts' or 'receipts from admission' as used in this chapter does not include that portion of the consideration collected as federal excise tax.

"(c) The tax imposed by this chapter is in addition to any other excise tax imposed by the state, any political subdivision of the state, or any city.

"Article 26.02. EXEMPTIONS

"(a) There shall be exempt from the tax imposed by this chapter

"(1) Receipts from admissions otherwise taxable if all of the net receipts inure exclusively to the benefit of state, religious, educational, or charitable institutions, societies, or organizations;

"(2) Receipts from any rodeo, regardless of whether the participants are amateurs or professional performers.

"(b) For the purpose of the proper administration of this chapter, it shall be presumed that all places of business and all persons who collect receipts or receipts from admission subject to tax under Article 26.01 of this chapter are liable for the tax unless the contrary is established. The burden of proving that receipts are exempt under the provisions of this

article is upon the person collecting or receiving the receipts, unless he has obtained from the comptroller an exemption certificate.

"Article 26.03. METHOD OF COLLECTION

"(a) The entertainment tax imposed by this chapter shall be added to the receipts from admission, and when added, the tax shall become a part of the admission charge. The tax shall be collected by the taxpayer, as herein defined, from the payees of the receipts from admission, and said tax shall be reported and paid to the state by the taxpayer in the manner and at the times provided for herein. The granting of a permit to an owner or operator to collect such taxes for and in behalf of the state shall be deemed to establish a fiduciary relationship between such permit holder and the state.

"(b) Except as hereinafter provided, the tax imposed by this chapter shall be due and payable quarterly at the office of the comptroller at Austin on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month.

"(c) Any person, firm, association, or corporation required to obtain a permit in accordance with Article 26.05 of this chapter shall be referred to herein as the taxpayer and shall be subject to the liabilities and responsibilities imposed by this chapter.

"(d) The taxpayer shall deduct and withhold from the taxes otherwise due from him two percent (2%) of such taxes otherwise due or One Thousand Dollars (\$1,000), whichever is the lesser, to reimburse himself for the cost of collecting the tax. In the event the payment of any taxes due under the applicable provisions of this chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this chapter, the taxpayer forfeits his claim and right to the discount of two percent (2%) or One Thousand Dollars (\$1,000), as the case may be.

"(e) The taxpayer shall pay to the state at the office of the comptroller at Austin the amount of taxes required to be collected under this chapter on the dates on which said taxes are due under the applicable provisions of this chapter. At the same time that the tax herein is payable,

the taxpayer shall file with the comptroller at Austin a report on such form as the comptroller shall from time to time prescribe, showing the receipts from admission and the price or charge for each class of admission.

"(f) The tax imposed by this chapter upon the receipts from admission shall be payable on the dates set forth in paragraph (b) of this article, except in the case of taxes due on receipts from admission to events or contests not held at a regular fixed place or establishment, in which case the tax shall be payable on the day following the event or contest (excluding Saturdays, Sundays, and legal holidays). However, the taxpayer shall have the right to request an extension of time within which to pay the tax or file such report.

"(g) The comptroller may require returns or payments to be made at times other than provided in this chapter. The comptroller may upon good cause shown extend for a period not to exceed thirty (30) days the time for making returns or payments.

"Article 26.04. RECORDS REQUIRED

"(a) The taxpayer shall make and keep records in Texas at an address shown on the reports to be filed with the comptroller for a period of two years. The records shall correctly reflect (1) the date of the event for which an admission charge was made; (2) the charge for admission; (3) the number of patrons admitted; and (4) if admitted gratuitously, the number of patrons so admitted. The records shall be open to inspection by the comptroller and the attorney general, or their duly authorized agents.

"(b) In addition, for the purpose of enabling the comptroller or his authorized agent to determine the amount of tax collected and payable to the state, or which should have been collected and paid to the state, or to determine whether a tax liability has been incurred, the comptroller or his authorized representative shall have the right to inspect any premises, and any books and records that may be kept incident to the conduct of any business or venture having receipts subject to tax under this chapter, as well as the books and records required to be kept by this chapter.

"(c) For the foregoing purposes, the comptroller or his duly authorized agent shall also have the right to remain upon said premises for such

length of time as is necessary to determine fully whether a tax liability has been incurred and the amount thereof. If the taxpayer fails to keep the required records or refuses to allow their inspection, the taxpayer shall forfeit to the State of Texas as a penalty not more than One Thousand Dollars (\$1,000) for each violation, and each violation shall constitute a separate offense. The venue for the collection of such penalties shall be in Travis County, Texas.

"Article 26.05. PERMIT REQUIRED

"(a) From and after the effective date of this chapter, every person, firm, association, or corporation owning or operating, or who desires to own or operate, any place of business or venture which makes a charge for admission shall file with the comptroller a duly acknowledged application for an owner's or operator's permit. The application shall be accompanied by an annual fee of Ten Dollars (\$10) to pay the expenses of administering and enforcing the provisions of this chapter. The permit shall be on the form prescribed by the comptroller. An application shall be filed and a permit obtained for all places of business and ventures charging admission owned or operated by the applicant. The application form shall set forth the name or names under which such owner or operator transacts or intends to transact each business or venture, as well as such owner's or operator's principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of the corporation or the members of the partnership or association, as the case may be, and their office, street, or post office address, as well as such other information as the comptroller may reasonably require. No one shall operate any place of business or venture charging admission until the application has been filed and a permit issued. The permit shall not be assignable. Only one permit shall be required of an owner or operator for all places of business and ventures to be operated. The application for a permit and the permit issued shall designate each location of the place of business or venture to be operated, by street address and town, and the permit may be amended from time to time in order to designate additional locations without the payment of an additional fee. No place of business or venture subject to the tax imposed by this

chapter shall be operated unless the location of such place of business or venture is designated on a permit. Each applicant shall be issued a permit for each place of business or venture and shall display the permit conspicuously at the place.

"(b) Upon receipt of the application and the posting of bond required by Article 26.07 of this chapter, the comptroller shall issue to the owner or operator a nonassignable, consecutively-numbered permit authorizing the operation of a designated place or places of business or ventures charging admission in this state from the date of the issuance of said permit, until and including the following August 31. On or before September 1 of each year, and before any owner or operator shall operate a place of business or venture in this state after August 31 of that year, an application shall be filed, a bond posted, and a permit obtained for the succeeding fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this chapter. If such permit is cancelled or suspended, said owner or operator shall not operate or allow to be operated any place of business or venture charging admission within the state until a new permit is granted or the original permit is reinstated. However, no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this chapter.

"(c) In the event that a place of business or a venture for which admission is charged is not held at a regular fixed place or establishment, then the owner or operator shall make application for a permit as required in Paragraph (a) of this article within a period of twenty (20) days prior to the date contemplated for the event or contest for which admission is charged is scheduled to begin. The permit shall be effective for a period no longer than the period set forth in the application as being the period during which the event or contest will be held. Such application shall also set forth the location or locations, where the event or contest will be held and the permit shall disclose such location or locations.

"(d) A corporation or organization which is otherwise exempt from the

application of this chapter may apply and receive from the comptroller an exemption certificate on a form prescribed by the comptroller upon submission of satisfactory evidence that such corporation or organization is exempt. The application for exemption shall designate the date or dates and place of the activity for which exemption is claimed. Issuance of an exemption certificate shall be presumptive only of the exempt nature of the activity for which the certificate was issued.

"(e) Upon receipt of an appropriate application for permit and bond, the comptroller shall not refuse to issue a permit because the applicant is contesting in good faith an admission tax otherwise due for a period prior to the effective date of this chapter. However, nothing contained herein shall be construed as meaning that any such tax is forgiven. All admission or entertainment taxes, penalties, and interest accruing to the state by virtue of any of the reenacted or repealed provisions set out in this chapter before the effective date of this chapter shall be and remain valid and binding obligations to the state for all taxes, penalties, and interest accruing under the provisions of all prior laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the state are hereby expressly preserved and declared to be legal and valid obligations to the state.

"Article 26.06. CANCELLATION OF PERMIT

"(a) The comptroller, or any duly authorized agent of the comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of, any owner's or operator's permit or exemption certificate as provided under the terms of this chapter to any person who has violated or has failed to comply with any of the provisions of this chapter, including any of the following offenses: (1) failure or refusal to remit or pay to the state any excise tax imposed by this chapter, which tax is shown to be owing to the state by a duly verified audit made by a duly authorized agent of the comptroller from any report filed with the comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this chapter; (2) failure to file any return or report required under the provisions of this

chapter; (3) making and filing with the comptroller of any false or incomplete application, return or report, required under the provisions of this chapter; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) falsifying, destroying, mutilating, removing from the state, or secreting any books and records, or any application, return, or report; (6) refusing to permit the comptroller, attorney general, or their duly authorized agents to inspect, audit, and examine any books and records required to be kept or to inspect any premises they are authorized to inspect; (7) engaging in any business or venture requiring a permit under the provisions of this chapter without obtaining and possessing a valid permit.

"(b) Before any permit or exemption certificate may be cancelled, or the issuance, reinstatement, or extension thereof refused, the comptroller shall give the applicant or permittee not less than fifteen (15) days' notice of a hearing at the office of the comptroller in Austin granting the applicant or permittee an opportunity to show cause before the comptroller, or his duly authorized agent, why such action should not be taken. The notice shall be in writing and may be mailed by United States registered mail to the applicant or permittee at his last known address, or may be delivered to him personally by a duly authorized agent of the comptroller, and no other notice shall be necessary. The comptroller may prescribe rules of procedure and evidence for such hearings.

"(c) In the event that the permit or exemption certificate is cancelled by the comptroller, or his duly authorized agent after such hearing is held or opportunity to be heard has been given, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the state except by the provisions of this paragraph, shall become due and payable concurrently with the cancellation of the permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports he filed and ending with the date of cancellation, and shall pay to the state all taxes which have accrued under this chapter.

"After being given notice of cancellation, it shall be unlawful for any person to continue to operate a place

of business or venture charging admission under the cancelled permit.

"(d) An appeal from any order of the comptroller or his duly authorized agent cancelling or refusing the issuance, extension, or reinstatement of any permit or exemption certificate may be taken to a district court of Travis County by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits except that the following exceptions shall be applicable: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the comptroller or his duly authorized agent; (2) such proceedings shall have precedence over all other causes of a different nature; and (3) the order, decision, or ruling of the comptroller, or his duly authorized agent may for good cause shown be suspended or modified by the court pending a trial on the merits. Any suspension or modification shall not relieve the taxpayer or his surety of their obligations under this chapter or under any bond posted on behalf of such taxpayer.

"Article 26.07. BOND REQUIRED

"(a) Before any permit shall be issued and before engaging in the operation of a place of business or a venture charging admission on which a tax is required to be paid under this chapter every owner or operator shall execute and file with the comptroller a good and sufficient surety bond in the amount of One Thousand Dollars (\$1,000), which shall run concurrently with the permit. The bond shall be signed by the owner or operator and a surety company or companies authorized to do business in this state. The bond shall be payable to the State of Texas and the conditions, and form of the bond shall be prescribed by the comptroller. Each bond shall provide for the performance of all obligations, and the payment at Austin of all taxes due, and all costs, penalties, and interest provided in this chapter; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force, shall not for any fiscal year exceed the penal sum named therein; provided, further, that any such bond, continuous in form, may be, if sufficient and acceptable to the comptroller, continued in effect, by a renewal certificate, and, if so continued in effect, shall be sufficient to support

the issuance of any new permit; and provided, further, that the said renewal certificate, when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. After six (6) months from the effective date thereof, the amount of the bond shall be adjusted to a sum equal to no more than two (2) times the highest tax said owner or operator may be liable to the state for any quarter during the preceding six (6) months, or Ten Thousand Dollars (\$10,000), whichever is the lesser. The comptroller is hereby given the authority, in the appropriate case and upon submission of satisfactory evidence that the revenues will be protected, to reduce the amount of the bond below the maximums provided for herein; provided, however, that the amount of the bond shall never be less than One Hundred Dollars (\$100).

"(b) The comptroller shall have the right, if the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond within the maximums provided for herein. When said new bond has been furnished, the comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution on any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect adversely to the comptroller the validity of any bond. Should any owner or operator fail or refuse to supply a new or additional bond within thirty (30) days after his receipt of notice of the comptroller's demand for a new or additional bond, the owner or operator's permit shall be cancelled by the comptroller.

"(c) Any surety on any bond furnished by any owner or operator under this article shall be discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date on which the surety shall have lodged with the comptroller a written request for discharge. Provided, however, that the request shall not operate to release the surety from any liability already accrued or which shall accrue prior to the expiration of said thirty-day period. The comptroller shall, promptly on the receipt of notice of said request by the sure-

ty, notify the owner or operator of the surety's request, and unless such owner or operator shall within thirty (30) days from the date of receipt of said notice file with the comptroller a new bond with a surety duly authorized to do business in this state, in the amount and form required by this article, the comptroller shall proceed to cancel the permit of the owner or operator in the manner provided in this chapter. If the new bond shall be furnished by said owner or operator as above provided, the comptroller shall cancel the bond for which the new bond is substituted.

"(d) In lieu of giving a bond, any owner or operator may deposit in the suspense account of the state treasury money in the amount of the bond that may be otherwise required by the terms of this article which shall not be released until a bond is executed in lieu thereof, or until the comptroller has made an audit of the owner or operator's records and authorized the same released.

"(e) Suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of the owner or operator, or without making the owner or operator, as principal obligor in said bond, a party to the suit.

"Article 26.08. PENALTIES

"(a) If any taxpayer fails to pay the tax or file a report as required by this chapter when the same shall be due, he shall forfeit five percent (5%) of the amount of tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five percent (5%) of the tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes and accrued penalty shall draw interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of penalties shall be in Travis County.

"(b) All taxes, penalties, and cost of auditing, as provided for herein, due, or that might become due by any taxpayer to the state, shall be and become a preferred lien, first and prior to all other existing liens, contract or statutory, legal or equitable, and regardless of the time the lien originated upon all the property devoted to or used in the business or venture of the taxpayer charging admission, which property includes land, buildings, fixtures, equipment, trucks, cars, or other motor vehicles, or any other

equipment used in carrying on such business or venture. The Attorney General of the State of Texas may file suit for the collection of taxes, penalty and interest and for the foreclosure of the lien herein provided in any court of competent jurisdiction in Travis County, Texas. If any person, firm, corporation, or association of persons are alleged to be liable for any tax imposed by this chapter and who fails or refuses to pay such tax and it becomes necessary to file suit or intervene in any manner for the establishment or collection of said taxes, claims or penalties, a claim showing the amount of the tax due the state certified to by the comptroller of public accounts or his chief clerk shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said claim may be shown.

"The lien provided for herein shall not be valid or effective against any mortgagee, holder of a deed of trust, purchaser, pledgee, or judgment creditor acquiring title, lien, or other right or interest in the property covered by the lien provided for herein more than twelve (12) months immediately preceding the filing or recording of notice of the lien provided for herein.

"(c) Any taxpayer required to file a report or keep records as provided in this chapter, who fails or refuses to file the report on the dates provided in this chapter, or make and keep such records, or who violates any other provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) and the fine is in addition to the civil penalties provided in Article 26.08 of this chapter. The venue for prosecutions under this paragraph shall be in Travis County.

"Article 26.09. RESTRAINING ORDERS AND INJUNCTIONS

"Any owner or operator of a place of business or venture charging admission who does not have an exemption certificate issued by the comptroller as provided for in this chapter, and who fails to obtain a permit and post bond in accordance with the provisions of this chapter, may be restrained or enjoined by court order from operating the place of business or venture without a permit and bond, or, if the owner or operator is entitled

to an exemption certificate, without having a certificate. Suits for any restraining order or injunction shall be filed by the attorney general in a court of competent jurisdiction in Travis County. In the event that the owner or operator has already commenced the business or venture, then the attorney general may seek in his suit any taxes due under this chapter from the owner or operator as additional relief.

"This article shall be cumulative of and in addition to any other provisions of law authorizing any kind of injunctive relief.

"Article 26.10. PROMULGATION OF RULES AND REGULATIONS BY COMPTROLLER

"The comptroller is vested with authority to promulgate rules and regulations, not inconsistent with this chapter, to enforce the provisions of this chapter and to facilitate the collection of taxes imposed."

Sec. 15. Article 3.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Art. 3.01. Calculation of Tax

"(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight per cent (8%) of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; (c) gas used for lifting oil, unless sold for such purposes; and (d) gas used for fuel in field operations in connection with exploring, developing or producing oil or gas where such gas is produced and used in the field, or on the lease, where produced by the same operator as defined in Article 3.04(15). For purposes of this Article 3.01 (2)(d), gas used for field operations shall include, but not be limited to, gas used for drilling, heating, separating, dehydrating, pumping, compressing, and generating in-

cident to exploring, developing or producing oil or gas."

Sec. 16. Article 3.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended by adding a new Section (15) to read as follows:

"(15) The term 'operator' referred to in Article 3.01(2)(d) means the person actually engaged in exploring for, developing or producing oil or gas either on his own land, on land held by him under lease, or on land in which ownership is divided, for which he is designated operator under a joint operating agreement."

Section 17. Section 1, Article 12.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1st of each year, file such reports as are required by Articles 12.08 and 12.19 and pay in advance to the Comptroller a franchise tax for the year following which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

"(a) Basic Tax

"(i) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of this Chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02 of this Chapter.

"As used in this Chapter, the phrase 'stated capital' shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

"(ii) Tax on Debt. In addition to the franchise tax due and payable under Subsection (1)(a)(i) of Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under said Subsection (i) for the privilege of doing business in the corporate form during the periods listed below, an additional tax as follows:

An additional
tax for the

"For the Period from: year of:
May 1, 1968, to and
including April 30, 1969, \$2.25

May 1, 1969, to and including April 30, 1970, \$2.00
 May 1, 1970, to and including April 30, 1971, \$1.50
 May 1, 1971, to and including April 30, 1972, \$1.00
 May 1, 1972, to and including April 30, 1973 \$0.50
 per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of taxable debt allocable to Texas.

"For the purposes of this Subsection (1)(a)(ii), 'Taxable Debt' shall mean outstanding bonds, notes and debentures, including all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, but this term shall not include instruments which have been previously classified as surplus.

"Taxable debt allocable to Texas shall be determined by using the same percentage used to allocate taxable capital to Texas under the provisions of Article 12.02.

"The additional franchise tax levied by this Subsection (1)(a)(ii) shall expire after April 30, 1973.

"(b) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. 18. Section 3, Article 12.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(3) Except as provided in preceding Subsection (2) all public utility corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which

shall be based on whichever of the following shall yield the greatest tax.

"(a) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

"(b) Two Dollars and Seventy-five Cents (\$2.75) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. 19, Section 1, Article 12.19, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

If Total Assets		The Tax Shall Be
Are at Least	But Less Than	
\$ 0.00	\$ 15,000.00	\$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00
30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	60,000.00	140.00
60,000.00	70,000.00	165.00
70,000.00	80,000.00	190.00
80,000.00	90,000.00	215.00
90,000.00	100,000.00	240.00
100,000.00	110,000.00	265.00
110,000.00	120,000.00	290.00
120,000.00	130,000.00	315.00
130,000.00	140,000.00	340.00
140,000.00	150,000.00	365.00"

Sec. 20. This Act shall take effect January 1, 1969.

Sec. 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect

and be in force from and after its passage, and it is so enacted.

On motion of Senator Hall and by unanimous consent, the reading of the amendment was dispensed with and he explained the amendment.

Question—Shall the amendment by Senator Hall to H. B. No. 2 be adopted?

Recess

On motion of Senator Kennard the Senate at 11:54 o'clock a.m. took recess until 2:00 o'clock p.m. today.

After Recess

The President called the Senate to order at 2:00 o'clock p.m.

House Bill 2 on Second Reading

The Senate resumed the consideration of the pending business, same being H. B. No. 2 on its second reading and passage to third reading with an amendment by Senator Hall pending.

Question—Shall the amendment by Senator Hall to H. B. No. 2 be adopted?

Senator Schwartz offered the following amendment to the pending amendment by Senator Hall:

Amend the pending Hall substitute for H. B. 2 by striking Section 20 therefrom and substituting the following:

"All provisions of this Act shall take effect January 1, 1969, except those provisions contained in Sections 17, 18 and 19 hereof, pertaining to the Corporation Franchise Tax, which shall take effect October 1, 1968."

The amendment was read.

On motion of Senator Schwartz and by unanimous consent the amendment to the pending amendment was withdrawn.

(President Pro Tempore in the Chair.)

Senator Schwartz offered the following amendment to the pending amendment by Senator Hall:

Amend the pending Hall substitute for H. B. 2 by striking Section 8 on page 6 thereof from the Bill and substituting the following Section 8:

Sec. 8. Section (B), Article 20.04, Title 122A, Taxation-General, Revised

Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

(B) Items Taxed Under Existing Statutes.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of (a) oil as taxed under the provisions of Chapter 4 of this Title; (b) sulphur as taxed under the provisions of Chapter 5 of this Title; (c) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this title; (d) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title; (e) cement as taxed under the provisions of Chapter 18 of this Title; and (f) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs, or counters or from trays, glasses, dishes or other tableware provided by the vendor.

(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of telephone and telegraph service.

The amendment to the pending amendment was read and was adopted.

Record of Votes

Senators Mauzy, Hazlewood, Blanchard, Wilson, Aikin, Strong, Hall, Word and Hightower asked to be recorded as voting "Nay" on the adoption of the amendment to the pending amendment.

Senator Schwartz offered the following amendment to the pending amendment by Senator Hall:

Amend the pending Hall substitute for H. B. 2 by striking Section 3 (D) on page 2 thereof from the Bill and substituting the following Section 3 (D):

"(D) Unlawful Acts. (1) Any person convicted of violating paragraphs (B) or (C) of this Article shall be guilty of a misdemeanor and shall suffer the penalties set forth in Article 20.12(D) of this Chapter.

"(2) The provisions of Article 286a, V.A.P.C., Acts 1961, 57th Legislature, First Called Session, p. 38, Ch. 15, as amended, shall not be applicable to any article subject to the tax levied herein, and no person shall obstruct the purchase of such taxable article or articles, and no person need refuse to sell same because of the provisions of said Article 286a of the Penal Code of the State of Texas."

The amendment was read.

Senator Moore raised the Point of Order that the amendment to the pending amendment is not germane to the caption of the bill.

(President in the Chair.)

The President sustained the Point of Order.

Senator Hall offered the following amendment to the pending amendment by Senator Hall:

Amend Section 20 of the Hall amendment to House Bill No. 2 to read as follows:

"Sec. 20. This Act shall take effect January 1, 1969 except that Sections 17, 18 and 19 of this Act shall take effect May 1, 1969."

The amendment was read and was adopted.

Question—Shall the amendment by Senator Hall to H. B. No. 2 be adopted?

Senator Hardeman moved to table the amendment by Senator Hall as amended.

Question on the motion to table the amendment by Senator Hall as amended, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—19

Bates

Bernal

Berry
Blanchard
Brooks
Cole
Creighton
Grover
Hardeman
Harris
Hazlewood

Jordan
Mauzy
Moore
Ratliff
Reagan
Schwartz
Wade
Watson

Nays—12

Aikin
Christie
Connally
Hall
Harrington
Herring

Hightower
Kennard
Patman
Strong
Wilson
Word

Senator Strong offered the following amendment to the bill:

Amend H. B. 2 by deleting therefrom all of Sections (1), (2), (3), (4), (5A), (6), (7), (8), and (9) and renumbering the other sections accordingly.

The amendment was read.

(Senator Herring in the Chair.)

Notice of Motion for Executive Session

Senator Blanchard asked unanimous consent to move for an Executive Session of the Senate at 4:00 o'clock p.m. today.

There was objection.

(President in the Chair.)

Motion to Adjourn

Senator Reagan moved the Senate stand adjourned until 10:30 o'clock a.m., Monday, July 1, 1968.

The motion was lost.

Motion for Meeting of Committee on Nominations

Senator Blanchard asked unanimous consent that the Committee on Nominations be permitted to meet while the Senate was in session.

There was objection.

Motion to Adjourn

Senator Grover moved that the Senate stand adjourned until 10:30 o'clock tomorrow.

Question on the motion to adjourn, "Yeas" and "Nays" were demanded.

The motion to adjourn was lost by the following vote:

Yeas—10

Bernal	Moore
Berry	Patman
Brooks	Schwartz
Grover	Strong
Harris	Wade

Nays—21

Aikin	Herring
Bates	Hightower
Blanchard	Jordan
Christie	Kennard
Cole	Mauzy
Connally	Ratliff
Creighton	Reagan
Hall	Watson
Hardeman	Wilson
Harrington	Word
Hazlewood	

Message From the House

Hall of the House of Representatives
Austin, Texas,
June 27, 1968.

Hon. Preston Smith, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 15, Creating the Family Law Study Committee, determining its membership and composition, prescribing its functions, authorizing certain activities, and requesting recommendations and suggested legislation to be presented to the 61st Legislature.

H. C. R. No. 17, Granting permission to John B. Barbour, Jr., Cora Frances Kitchell and husband, William G. Kitchell and Mrs. Verna L. Barbour and Hugh Preston to sue the State of Texas and the Texas Highway Department.

H. C. R. No. 20, Granting authority to Texas A & I University to accept and receive Fee Simple Title to certain land in Kleberg County, Texas, as may be granted by the United States of America.

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Message From the Governor

The following message received from the Governor was read and re-

ferred to the Committee on Nominations:

Austin, Texas,
June 27, 1968.

To the Senate of the Sixtieth Legislature, First Called Session:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

To be a member of the Board of Directors of A & M University, to fill the unexpired term of Gardiner Symonds, resigned, term to expire January 10, 1969: Ford Albritton, Jr. of Bryan, Brazos County.

Respectfully submitted,

JOHN CONNALLY,
Governor of Texas.

Senate Bill on First Reading

By unanimous consent, the following bill was introduced, read first time and referred to the Committee indicated:

By Senator Brooks:

S. B. No. 20, A bill to be entitled "An Act creating and establishing a Conservation and Reclamation District under Article 16, Section 59 of the Constitution of Texas, to be known as 'Gulfway Utility District'; defining the boundaries; determining and finding benefits to the land and other property within the District; finding that the boundaries of the District form a closure; conferring rights, powers, privileges, authorities and functions upon the District; providing for continuing supervision by the State through the Texas Water Rights Commission; providing that the District shall not call a confirmation election; providing for a hearing for exclusions; providing that the District shall not have the power to impose, levy, assess or collect any taxes; providing for the issuance of bonds; providing for a Board of Directors; providing for the use of public roadways, streets, alleys and public easements; providing that the District shall bear the expense of relocation of certain properties and facilities; providing for the power to contract with the United States of America, the State of Texas and others, and making provision for such contracts; providing for the power to borrow money; providing that the bonds of the District are eligible investments; providing for the appointment of a depository and investment of surplus funds; providing for a system of accounts and an audit

thereof; finding that the District will be carrying out an essential public function and providing that properties, purchases and bonds of the District are tax-free; providing that the Municipal Annexation Act is not applicable to the creation of the District; finding that the requirements of Article 16, Section 59 of the Constitution have been accomplished; providing that the enactment of this Act is essential and necessary in the preservation and conservation of natural resources; enacting other provisions related to the subject; providing a severability clause; and declaring an emergency."

To the Committee on Water and Conservation.

House Bill 2 on Second Reading

The Senate resumed the consideration of the pending business, same being H. B. No. 2 with an amendment by Senator Strong pending.

On motion of Senator Strong, and by unanimous consent, he withdrew the pending amendment.

Senator Schwartz offered the following amendment to the bill:

Amend House Bill No. 2, by striking all below the enacting clause, and substituting in lieu thereof the following:

Section 1. Article 3.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Art. 3.01. Calculation of Tax

"(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows.

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight per cent (8%) of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; (c) gas used for lifting oil, unless sold for such purposes; and (d) gas used for fuel in field operations in connec-

tion with exploring, developing or producing oil or gas where such gas is produced and used in the field, or on the lease, where produced by the same operator as defined in Article 3.04(15). For purposes of this Article 3.01(2)(d), gas used for field operations shall include, but not be limited to, gas used for drilling, heating, separating, dehydrating, pumping, compressing, and generating incident to exploring, developing or producing oil or gas."

Sec. 2. Article 3.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding a new Section (15) to read as follows:

"(15) The term 'operator' referred to in Article 3.01(2)(d) means the person actually engaged in exploring for, developing or producing oil or gas either on his own land, on land held by him under lease, or on land in which ownership is divided, for which he is designated operator under a joint operating agreement."

Sec. 3. Section (1), Article 9.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of motor fuel in this State an excise tax of six cents (6¢) per gallon or fractional part thereof so sold, distributed, or used in this State. Every distributor who makes a first sale or distribution of motor fuel in this State for any purpose whatsoever shall, at the time of such sale or distribution, collect the said tax from the purchaser or recipient of said motor fuel, in addition to his selling price, and shall report and pay to the State of Texas the taxes collected at the time and in the manner as hereinafter provided. Every such distributor shall also be liable to the State of Texas for the said tax of six cents (6¢) per gallon on each gallon of motor fuel or fractional part thereof used or consumed by him, and shall report and pay said tax as hereinafter provided. In each subsequent sale or distribution of motor fuel upon which the tax has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said motor fuel for the purpose of generating power for the propulsion of any mo-

tor vehicle upon the public highways of this State.

"It is the intent and purpose of this Article to collect the tax levied herein at the source of said motor fuel in Texas or as soon thereafter as the same may be subject to being taxed. No person, however, shall be required to pay a tax on motor fuel brought into this State in a quantity of thirty (30) gallons or less in a fuel tank, with a capacity of not more than thirty (30) gallons, when said fuel is connected with and feeds the carburetor of said motor vehicle and the motor fuel contained therein is used in the operation of said motor vehicle and not otherwise."

Sec. 4. Section (2), Article 9.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(2) The Comptroller may also authorize and permit any licensed distributor to make sales or distributions of motor fuel without collecting the tax to any other licensed distributor purchasing said motor fuel for resale or distribution of said product at wholesale when said other licensed distributor holds a valid distributor's permit and has, in the opinion of the Comptroller, a satisfactory and sufficient bond to justify such tax-free purchases.

"Every such distributor who shall be authorized and permitted to purchase motor fuel without paying the tax thereon for the purpose of resale or distribution of said products at wholesale, shall collect and pay over to the State of Texas at the time and in the manner provided in this Chapter, the tax imposed by Article 9.02 of this Chapter upon the first sale or distribution of said motor fuel made thereafter for any purpose other than a tax-free sale authorized by the Comptroller, and shall pay said tax at the rate aforesaid upon each gallon of motor fuel used or unaccounted for by said distributor during the calendar month next preceding the month said tax payment is required to be made, it being the intent hereof that said distributor shall on or before the 25th day of each calendar month report and pay to the State of Texas all taxes due on motor fuel purchased tax-free and thereafter sold, resold, distributed, used or unaccounted for during the calendar month next preceding. Any motor fuel purchased tax-free which is unaccounted for at the end of each calendar month shall

be prima facie presumed to have been sold or used for taxable purposes.

"The Comptroller may, upon request from any distributor, issue a certificate of authority to make sales of motor fuel without collecting the tax, under the terms and conditions provided in this Chapter, which certificate shall show the date issued, the names of the seller and purchaser of said motor fuel, the quantities authorized, and the period of time and the conditions under which said motor fuel may be sold and distributed tax-free to the purchaser thereof, and any distributor who shall make sales of motor fuel in Texas without holding a valid certificate of authority or who shall make sales of motor fuel in excess of the quantities authorized shall be liable for the tax imposed upon the first sale or distribution of said motor fuel. The certificate of authority to make tax-free sales of motor fuel shall be subject to revocation for failure or refusal by the seller or purchaser of said motor fuel to comply with any provisions of this Article or any rule and regulation duly promulgated by the Comptroller, or for the violation of the same, and said certificate of authority shall be revoked forthwith upon the failure of any distributor to report and pay all taxes due and owing the State of Texas within the time prescribed by this Article, or at the time fixed by the Comptroller for making periodical reports and tax payments, and no further tax-free sales shall be made to a distributor named in any certificate of authority after said certificate has been revoked until such certificate has been reinstated or a new certificate of authority has been issued."

Sec. 5. Section 1, Article 12.01, Title 122A, Taxation-General, Revised Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1st of each year, file such reports as are required by Articles 12.08 and 12.19 and pay in advance to the Comptroller a franchise tax for the year following which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

"(a) Basic Tax

"(i) Three Dollars (\$3)

per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of this Chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02 of this Chapter.

"As used in this Chapter, the phrase 'stated capital' shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

"(ii) Tax on Debt. In addition to the franchise tax due and payable under Subsection (1)(a)(i) of Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under said Subsection (i) for the privilege of doing business in the corporate form during the periods listed below, an additional tax as follows:

	An additional tax for the year of:
"For the Period from:	
May 1, 1968, to and including April 30, 1969,	\$2.25
May 1, 1969, to and including April 30, 1970,	\$2.00
May 1, 1970, to and including April 30, 1971,	\$1.50
May 1, 1971, to and including April 30, 1972,	\$1.00
May 1, 1972, to and including April 30, 1973	\$0.50

per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of taxable debt allocable to Texas.

"For the purposes of this Subsection (1)(a)(ii), 'Taxable Debt' shall mean outstanding bonds, notes and debentures, including all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, but this term shall not include instruments which have been previously classified as surplus.

"Taxable debt allocable to Texas shall be determined by using the same percentage used to allocate taxable

capital to Texas under the provisions of Article 12.02.

"The additional franchise tax levied by this Subsection (1)(a)(ii) shall expire after April 30, 1973.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. 6. Section 3, Article 12.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(3) Except as provided in preceding Subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

"(a) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. 7. Section 1, Article 12.19, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

If Total Assets		The Tax Shall Be
Are at Least	But Less Than	
\$ 0.00	\$ 15,000.00	\$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00

30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	60,000.00	140.00
60,000.00	70,000.00	165.00
70,000.00	80,000.00	190.00
80,000.00	90,000.00	215.00
90,000.00	100,000.00	240.00
100,000.00	110,000.00	265.00
110,000.00	120,000.00	290.00
120,000.00	130,000.00	315.00
130,000.00	140,000.00	340.00
140,000.00	150,000.00	365.00

Sec. 8. Section (B), Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

(B) Items Taxed Under Existing Statutes.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of (a) oil as taxed under the provisions of Chapter 4 of this Title; (b) sulphur as taxed under the provisions of Chapter 5 of this Title; (c) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this Title; (d) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title; (e) cement as taxed under the provisions of Chapter 18 of this Title; and (f) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor.

(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use of other consumption in this State of water.

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, dis-

tribution, lease or rental of and the storage, use or other consumption in this State of telephone and telegraph service.

Sec. 9. Section 15(e) of Article I of the Texas Liquor Control Act, Chapter 467, Acts of the 44th Legislature, 2nd Called Session, 1935, as last amended by Section 1, Chapter 262, Acts of the 57th Legislature, Regular Session, 1961 (Article 666-15(e), Vernon's Texas Penal Code), is amended by adding a new Section (12) to read:

"(12) In addition to all other taxes levied and assessed by the Texas Liquor Control Act, there is hereby levied and assessed an occupation tax of ten percent (10%) of the gross amount of money received by the holder of a Private Club Registration Permit, or any of its officers, directors, agents, servants or employees, from the serving or storing for consumption on the premises where stored distilled spirits and wine containing alcohol in excess of fourteen percent (14%) by volume. The holder of the Private Club Registration Permit, and any of its officers or directors, shall be liable for this tax.

"Except as expressly provided herein, the method and manner and time of payment of the taxes levied and assessed herein shall be determined by rule and regulation of the Board. The Board shall, by rule and regulation, determine the records to be made and kept, the reports to be submitted, the bonds to be made, and the procedures to be followed in order to assure that the taxes levied and assessed above are paid and collected.

"Any person who fails to pay the taxes levied and assessed above in the method, manner or time prescribed by rule or regulation of the Board, or who fails to make and keep records, to make and submit reports, to maintain bond, or to follow the procedures required by rule and regulation of the Board shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than One Hundred Dollars (\$100) or more than One Thousand Dollars (\$1,000), or by imprisonment in jail for not less than thirty (30) days nor more than one (1) year.

"All taxes collected under this Section shall be deposited in the State Treasury to the credit of the General Revenue Fund."

Sec. 10. Article 21.01, Title 122A, Taxation-General, Revised Civil Stat-

utes of Texas, 1925, is amended to read as follows:

"Article 21.01. REPORTS REQUIRED

"Every person, firm, association of persons or corporation owning or operating any place of amusement or business which charges a price or fee for admission on which a tax is imposed by this Chapter shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter on any admission collected for dances, moving pictures, operas, plays and musical entertainments all the proceeds of which inure exclusively to the benefit of State, religious, educational or charitable institutions, societies, or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual, or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock, or for admission to any rodeo; and provided, further, that an operator of entertainments such as motion pictures, operas, plays and like amusements where the admission charge is less than One Dollar and Five Cents (\$1.05) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this chapter. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided."

Sec. 11. Article 21.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.02. TAX IMPOSED

"(1) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays, concerts, musical shows, skating exhibitions and shows, skating rinks open to skating by patrons, and like amusements, where the admission charged is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollars and Fifteen Cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

"(2) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, boat racing, and like mechanical or animal contests and exhibitions.

"(3) There is hereby levied on the amounts paid for admission by season ticket, subscription, or lease for admission to any place, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place would be subject to taxation under the provisions of this Chapter.

"(4) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected."

Sec. 12. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding Chapter 26 to read as follows:

"CHAPTER 26

"ENTERTAINMENT TAX

"Article 26.01. TAX IMPOSED

"(a) There is hereby imposed an entertainment tax at the rate of five percent on receipts collected by any person, except as specifically exempted under this chapter, which are collected as

"(1) a charge for admission to any sporting event or athletic contest in which the participants are professionals or receive monetary compensation for participating, including baseball, football, basketball, soccer, hockey, rugby, polo, boxing, wrestling, and track and field meets; or

"(2) a charge denominated as an admission charge shall include a cover charge, service charge and any other charge or charges by any other name when made by a dance hall, private club, night-club, bottle club,

lounge, cabaret, tavern, dinner club, or dining room when the charge is made for the privilege of any use of the facilities of the person making the charge in order to consume food or beverages, to dance, or to view a floor show or other entertainment; or

"(3) a charge for admission to any natural or man-made phenomena, object or structure or curiosity or interest, such as caverns, amusement parks, buildings, ruins and guided tours of such natural or man-made phenomena, object, structure, curiosity or interest, and shall include charges made for the privilege of participating in or using any of the additional amusements therein or connected therewith.

"(b) 'Receipts' or 'receipts from admission' as used in this chapter means the total consideration received by a taxpayer as defined in Article 26.03 of this chapter, whether the consideration is paid as dues; under the terms of a subscription, membership or other card, season or other ticket, or lease for admission; or without the delivery or use of any receipt, ticket, or other written instrument or device. 'Receipts' or 'receipts from admission' as used in this chapter does not include that portion of the consideration collected as federal excise tax.

"(c) The tax imposed by this chapter is in addition to any other excise tax imposed by the state, any political subdivision of the state, or any city.

"Article 26.02. EXEMPTIONS

"(a) There shall be exempt from the tax imposed by this chapter

"(1) receipts from admissions otherwise taxable if all of the net receipts inure exclusively to the benefit of state, religious, educational, or charitable institutions, societies, or organizations;

"(2) receipts from any rodeo, regardless of whether the participants are amateurs or professional performers.

"(b) For the purpose of the proper administration of this chapter, it shall be presumed that all places of business and all persons who collect receipts or receipts from admission subject to tax under Article 26.01 of this chapter are liable for the tax unless the contrary is established. The burden of proving that receipts are exempt under the provisions of this article is upon the person collecting or receiving the receipts, unless he

has obtained from the comptroller an exemption certificate.

"Article 26.03. METHOD OF COLLECTION

"(a) The entertainment tax imposed by this chapter shall be added to the receipts from admission, and when added, the tax shall become a part of the admission charge. The tax shall be collected by the taxpayer, as herein defined, from the payees of the receipts from admission, and said tax shall be reported and paid to the state by the taxpayer in the manner and at the times provided for herein. The granting of a permit to an owner or operator to collect such taxes for and in behalf of the state shall be deemed to establish a fiduciary relationship between such permit holder and the state.

"(b) Except as hereinafter provided, the tax imposed by this chapter shall be due and payable quarterly at the office of the comptroller at Austin on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month.

"(c) Any person, firm, association, or corporation required to obtain a permit in accordance with Article 26.05 of this chapter shall be referred to herein as the taxpayer and shall be subject to the liabilities and responsibilities imposed by this chapter.

"(d) The taxpayer shall deduct and withhold from the taxes otherwise due from him two percent (2%) of such taxes otherwise due or One Thousand Dollars (\$1,000), whichever is the lesser, to reimburse himself for the cost of collecting the tax. In the event the payment of any taxes due under the applicable provisions of this chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this chapter, the taxpayer forfeits his claim and right to the discount of two percent (2%) or One Thousand Dollars (\$1,000), as the case may be.

"(e) The taxpayer shall pay to the state at the office of the comptroller at Austin the amount of taxes required to be collected under this chapter on the dates on which said taxes are due under the applicable provisions of this chapter. At the same time that the tax herein is payable, the taxpayer shall file with the comptroller at Austin a report on such form as the comptroller shall from time to time prescribe, showing the

receipts from admission and the price or charge for each class of admission.

"(f) The tax imposed by this chapter upon the receipts from admission shall be payable on the dates set forth in paragraph (b) of this article, except in the case of taxes due on receipts from admission to events or contests not held at a regular fixed place or establishment, in which case the tax shall be payable on the day following the event or contest (excluding Saturdays, Sundays, and legal holidays). However, the taxpayer shall have the right to request an extension of time within which to pay the tax or file such report.

"(g) The comptroller may require returns or payments to be made at times other than provided in this chapter. The comptroller may upon good cause shown extend for a period not to exceed thirty (30) days the time for making returns or payments.

"Article 26.04. RECORDS REQUIRED.

"(a) The taxpayer shall make and keep records in Texas at an address shown on the reports to be filed with the comptroller for a period of two years. The records shall correctly reflect (1) the date of the event for which an admission charge is made; (2) the charge for admission; (3) the number of patrons admitted; and (4) if admitted gratuitously, the number of patrons so admitted. The records shall be open to inspection by the comptroller and the attorney general, or their duly authorized agents.

(b) In addition, for the purpose of enabling the comptroller or his authorized agent to determine the amount of tax collected and payable to the state, or which should have been collected and paid to the state, or to determine whether a tax liability has been incurred, the comptroller or his authorized representative shall have the right to inspect any premises, and any books and records that may be kept incident to the conduct of any business or venture having receipts subject to tax under this chapter, as well as the books and records required to be kept by this chapter.

"(c) For the foregoing purposes, the comptroller or his duly authorized agent shall also have the right to remain upon said premises for such length of time as is necessary to determine fully whether a tax liability has been incurred and the amount thereof. If the taxpayer fails to keep

the required records or refuses to allow their inspection, the taxpayer shall forfeit to the State of Texas as a penalty not more than One Thousand Dollars (\$1,000) for each violation, and each violation shall constitute a separate offense. The venue for the collection of such penalties shall be in Travis County, Texas.

"Article 26.05. PERMIT REQUIRED

"(a) From and after the effective date of this chapter, every person, firm, association, or corporation owning or operating, or who desires to own or operate, any place of business or venture which makes a charge for admission shall file with the comptroller a duly acknowledged application for an owner's or operator's permit. The application shall be accompanied by an annual fee of Ten Dollars (\$10) to pay the expenses of administering and enforcing the provisions of this chapter. The permit shall be on the form prescribed by the comptroller. An application shall be filed and a permit obtained for all places of business and ventures charging admission owned or operated by the applicant. The application form shall set forth the name or names under which such owner or operator transacts or intends to transact each business or venture, as well as such owner's or operator's principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of the corporation or the members of the partnership or association, as the case may be, and their office, street, or post office address, as well as such other information as the comptroller may reasonably require. No one shall operate any place of business or venture charging admission until the application has been filed and a permit issued. The permit shall not be assignable. Only one permit shall be required of an owner or operator for all places of business and ventures to be operated. The application for a permit and the permit issued shall designate each location of the place of business or venture to be operated, by street address and town, and the permit may be amended from time to time in order to designate additional locations without the payment of an additional fee. No place of business or venture subject to the tax imposed by this chapter shall be operated unless the location of such place of business or venture is designated on

a permit. Each applicant shall be issued a permit for each place of business or venture and shall display the permit conspicuously at the place.

"(b) Upon receipt of the application and the posting of bond required by Article 26.07 of this chapter, the comptroller shall issue to the owner or operator a nonassignable, consecutively-numbered permit authorizing the operation of a designated place or places of business or ventures charging admission in this state from the date of the issuance of said permit, until and including the following August 31. On or before September 1 of each year, and before any owner or operator shall operate a place of business or venture in this state after August 31 of that year, an application shall be filed, a bond posted, and a permit obtained for the succeeding fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this chapter. If such permit is cancelled or suspended, said owner or operator shall not operate or allow to be operated any place of business or venture charging admission within the state until a new permit is granted or the original permit is reinstated. However, no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this chapter.

"(c) In the event that a place of business or a venture for which admission is charged is not held at a regular fixed place or establishment, then the owner or operator shall make application for a permit as required in Paragraph (a) of this article within a period of twenty (20) days prior to the date contemplated for the event or contest for which admission is charged is scheduled to begin. The permit shall be effective for a period no longer than the period set forth in the application as being the period during which the event or contest will be held. Such application shall also set forth the location or locations, where the event or contest will be held and the permit shall disclose such location or locations.

"(d) A corporation or organization which is otherwise exempt from the application of this chapter may apply and receive from the comptroller

an exemption certificate on a form prescribed by the comptroller upon submission of satisfactory evidence that such corporation or organization is exempt. The application for exemption shall designate the date or dates and place of the activity for which exemption is claimed. Issuance of an exemption certificate shall be presumptive only of the exempt nature of the activity for which the certificate was issued.

"(e) Upon receipt of an appropriate application for permit and bond, the comptroller shall not refuse to issue a permit because the applicant is contesting in good faith an admission tax otherwise due for a period prior to the effective date of this chapter. However, nothing contained herein shall be construed as meaning that any such tax is forgiven. All admission or entertainment taxes, penalties, and interest accruing to the state by virtue of any of the reenacted or repealed provisions set out in this chapter before the effective date of this chapter shall be and remain valid and binding obligations to the state for all taxes, penalties, and interest accruing under the provisions of all prior laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the state are hereby expressly preserved and declared to be legal and valid obligations to the state.

"Article 26.06. CANCELLATION OF PERMIT

"(a) The comptroller, or any duly authorized agent of the comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of, any owner's or operator's permit or exemption certificate as provided under the terms of this chapter to any person who has violated or has failed to comply with any of the provisions of this chapter, including any of the following offenses: (1) failure or refusal to remit or pay to the state any excise tax imposed by this chapter, which tax is shown to be owing to the state by a duly verified audit made by a duly authorized agent of the comptroller from any report filed with the comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this chapter; (2) failure to file any return or report required under the provisions of this chapter; (3) making and filing with the comptroller of any false or incomplete application, re-

turn or report required under the provisions of this chapter; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) falsifying, destroying, mutilating, removing from the state, or secreting any books and records, or any application, return, or report; (6) refusing to permit the comptroller, attorney general, or their duly authorized agents to inspect, audit, and examine any books and records required to be kept or to inspect any premises they are authorized to inspect; (7) engaging in any business or venture requiring a permit under the provisions of this chapter without obtaining and possessing a valid permit.

"(b) Before any permit or exemption certificate may be cancelled, or the issuance, reinstatement, or extension thereof refused, the comptroller shall give the applicant or permittee not less than fifteen (15) days' notice of a hearing at the office of the comptroller in Austin granting the applicant or permittee an opportunity to show cause before the comptroller, or his duly authorized agent, why such action should not be taken. The notice shall be in writing and may be mailed by United States registered mail to the applicant or permittee at his last known address, or may be delivered to him personally by a duly authorized agent of the comptroller, and no other notice shall be necessary. The comptroller may prescribe rules of procedure and evidence for such hearings.

"(c) In the event that the permit or exemption certificate is cancelled by the comptroller, or his duly authorized agent, after such hearing is held or opportunity to be heard has been given, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the state except by the provisions of this paragraph, shall become due and payable concurrently with the cancellation of the permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports he filed and ending with the date of cancellation, and shall pay to the state all taxes which have accrued under this chapter.

"After being given notice of cancellation, it shall be unlawful for any person to continue to operate a place of business or venture charging admission under the cancelled permit.

"(d) An appeal from any order of the comptroller or his duly authorized agent cancelling or refusing the issuance, extension, or reinstatement of any permit or exemption certificate may be taken to a district court of Travis County by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits except that the following exceptions shall be applicable: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the comptroller or his duly authorized agent; (2) such proceedings shall have precedence over all other causes of a different nature; and (3) the order, decision, or ruling of the comptroller, or his duly authorized agent may for good cause shown be suspended or modified by the court pending a trial on the merits. Any suspension or modification shall not relieve the taxpayer or his surety of their obligations under this chapter or under any bond posted on behalf of such taxpayer.

"Article 26.07. BOND REQUIRED

"(a) Before any permit shall be issued and before engaging in the operation of a place of business or a venture charging admission on which a tax is required to be paid under this chapter every owner or operator shall execute and file with the comptroller a good and sufficient surety bond in the amount of One Thousand Dollars (\$1,000), which shall run concurrently with the permit. The bond shall be signed by the owner or operator and a surety company or companies authorized to do business in this state. The bond shall be payable to the State of Texas and the conditions, and form of the bond shall be prescribed by the comptroller. Each bond shall provide for the performance of all obligations, and the payment at Austin of all taxes due, and all costs, penalties, and interest provided in this chapter; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force, shall not for any fiscal year exceed the penal sum named therein; provided, further, that any such bond, continuous in form, may be, if sufficient and acceptable to the comptroller, continued in effect, by a renewal certificate, and if so continued in effect, shall be sufficient to support the issuance of any new permit; and provided, further, that the

said renewal certificate, when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. After six (6) months from the effective date thereof, the amount of the bond shall be adjusted to a sum equal to no more than two (2) times the highest tax said owner or operator may be liable to the state for any quarter during the preceding six (6) months, or Ten Thousand Dollars (\$10,000), whichever is the lesser. The comptroller is hereby given the authority, in the appropriate case and upon submission of satisfactory evidence that the revenues will be protected, to reduce the amount of the bond below the maximums provided for herein; provided, however, that the amount of the bond shall never be less than One Hundred Dollars (\$100).

"(b) The comptroller shall have the right, if the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond within the maximums provided for herein. When said new bond has been furnished, the comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution on any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect adversely to the comptroller the validity of any bond. Should any owner or operator fail or refuse to supply a new or additional bond within thirty (30) days after his receipt of notice of the comptroller's demand for a new or additional bond, the owner or operator's permit shall be cancelled by the comptroller.

"(c) Any surety on any bond furnished by any owner or operator under this article shall be discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date on which the surety shall have lodged with the comptroller a written request for discharge. Provided, however, that the request shall not operate to release the surety from any liability already accrued, or which shall accrue prior to the expiration of said thirty-day period. The comptroller shall, promptly on the receipt of notice of said request by the surety, notify the owner or operator of the surety's request, and unless such owner or operator shall within thirty

(30) days from the date of receipt of said notice file with the comptroller a new bond with a surety duly authorized to do business in this state, in the amount and form required by this article, the comptroller shall proceed to cancel the permit of the owner or operator in the manner provided in this chapter. If the new bond shall be furnished by said owner or operator as above provided, the comptroller shall cancel the bond for which the new bond is substituted.

"(d) In lieu of giving a bond, any owner or operator may deposit in the suspense account of the state treasury money in the amount of the bond that may be otherwise required by the terms of this article which shall not be released until a bond is executed in lieu thereof, or until the comptroller has made an audit of the owner or operator's records and authorized the same released.

"(e) Suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of the owner or operator, or without making the owner or operator, as principal obligor in said bond, a party to the suit.

"Article 26.08. PENALTIES

"(a) If any taxpayer fails to pay the tax or file a report as required by this chapter when the same shall be due, he shall forfeit five percent (5%) of the amount of tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five percent (5%) of the tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes and accrued penalty shall draw interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due. Venue for collection of penalties shall be in Travis County.

"(b) All taxes, penalties, and cost of auditing, as provided for herein, due, or that might become due by any taxpayer to the state, shall be and become a preferred lien, first and prior to all other existing liens, contract or statutory, legal or equitable, and regardless of the time the lien originated upon all the property devoted to or used in the business or venture of the taxpayer charging admission, which property includes land, buildings, fixtures, equipment, trucks, cars, or other motor vehicles, or any other equipment used in carrying on such business or venture. The Attorney General of the State of Texas

may file suit for the collection of taxes, penalty and interest and for the foreclosure of the lien herein provided in any court of competent jurisdiction in Travis County, Texas. If any person, firm, corporation, or association of persons are alleged to be liable for any tax imposed by this chapter and who fails or refuses to pay such tax and it becomes necessary to file suit or intervene in any manner for the establishment or collection of said taxes, claims or penalties, a claim showing the amount of the tax due the state certified to by the comptroller of public accounts or his chief clerk shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said claim may be shown.

"The lien provided for herein shall not be valid or effective against any mortgagee, holder of a deed of trust, purchaser, pledgee, or judgment creditor acquiring title, lien, or other right or interest in the property covered by the lien provided for herein more than twelve (12) months immediately preceding the filing or recording of notice of the lien provided for herein.

"(c) Any taxpayer required to file a report or keep records as provided in this chapter, who fails or refuses to file the report on the date provided in this chapter, or make and keep such records, or who violates any other provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred (\$100) and the fine is in addition to the civil penalties provided in Article 26.08 of this chapter. The venue for prosecutions under this paragraph shall be in Travis County.

"Article 26.09. RESTRAINING ORDERS AND INJUNCTIONS

"Any owner or operator of a place of business or venture charging admission who does not have an exemption certificate issued by the comptroller as provided for in this chapter, and who fails to obtain a permit and post bond in accordance with the provisions of this chapter, may be restrained or enjoined by court order from operating the place of business or venture without a permit and bond, or, if the owner or operator is entitled to an exemption certificate, without having a certifi-

cate. Suits for any restraining order or injunction shall be filed by the attorney general in a court of competent jurisdiction in Travis County. In the event that the owner or operator has already commenced the business or venture, then the attorney general may seek in his suit any taxes due under this chapter from the owner or operator as additional relief.

"This article shall be cumulative of and in addition to any other provisions of law authorizing any kind of injunctive relief.

"Article 26.10. PROMULGATION OF RULES AND REGULATIONS BY COMPTROLLER

"The comptroller is vested with authority to promulgate rules and regulations, not inconsistent with this chapter, to enforce the provisions of this chapter and to facilitate the collection of taxes imposed."

Sec. 12. EFFECTIVE DATE. With the exception of Sections 5, 6, and 7, this Act shall become effective October 1, 1968. Sections 5, 6, and 7, shall become effective May 1, 1969.

Sec. 13. EMERGENCY. The importance of this legislation and the crowded condition of the calendar in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and the Rule is hereby suspended; and that this Act take effect and be in force in accordance with Section 12, and it is so enacted.

The amendment was read.

Senator Reagan raised the Point of Order that the amendment seeks to amend sections of the bill that have been previously amended at the same stage of the bill.

The President over-ruled the Point of Order.

Pending discussion by Senator Schwartz of his amendment to H. B. No. 2, Senator Hardeman moved the previous question on the pending amendment and the passage of H. B. No. 2 to third reading and the motion was duly seconded.

Question—Shall the previous question now be put?

The previous question failed to be ordered by the following vote:

Yeas—11

Aikin	Hightower
Bates	Ratliff
Connally	Reagan
Hall	Watson
Hardeman	Word
Hazlewood	

Nays—20

Bernal	Herring
Berry	Jordan
Blanchard	Kennard
Brooks	Mauzy
Christie	Moore
Cole	Patman
Creighton	Schwartz
Grover	Strong
Harrington	Wade
Harris	Wilson

On motion of Senator Schwartz, and by unanimous consent, he withdrew the pending amendment.

Senator Schwartz offered the following amendment to the bill:

Amend House Bill No. 2, by striking all below the enacting clause, and substituting in lieu thereof the following:

Section 1. Article 3.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Art. 3.01. Calculation of Tax.

"(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight per cent (8%) of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; (c) gas used for lifting oil, unless sold for such purposes; and (d) gas used for fuel in field operations in connection with exploring, developing or producing oil or gas where such gas is produced and used in the field, or on the lease, where produced by the same operator as defined in Ar-

ticle 3.04(15). For purposes of this Article 3.01(2)(d), gas used for field operations shall include, but not be limited to, gas used for drilling, heating, separating, dehydrating, pumping, compressing, and generating incident to exploring, developing or producing oil or gas."

Sec. 2. Article 3.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding a new Section (15) to read as follows:

"(15) The term 'operator' referred to in Article 3.01(2)(d) means the person actually engaged in exploring for, developing or producing oil or gas either on his own land, on land held by him under lease, or on land in which ownership is divided, for which he is designated operator under a joint operating agreement."

Sec. 3. Section (1), Article 9.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of motor fuel in this State an excise tax of six cents (6¢) per gallon or fractional part thereof so sold, distributed, or used in this State. Every distributor who makes a first sale or distribution of motor fuel in this State for any purpose whatsoever shall, at the time of such sale or distribution, collect the said tax from the purchaser or recipient of said motor fuel, in addition to his selling price, and shall report and pay to the State of Texas the taxes collected at the time and in the manner as hereinafter provided. Every such distributor shall also be liable to the State of Texas for the said tax of six cents (6¢) per gallon on each gallon of motor fuel or fractional part thereof used or consumed by him, and shall report and pay said tax as hereinafter provided. In each subsequent sale or distribution of motor fuel upon which the tax has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said motor fuel for the purpose of generating power for the propulsion of any motor vehicle upon the public highways of this State.

"It is the intent and purpose of this Article to collect the tax levied herein at the source of said motor fuel in Texas or as soon thereafter

as the same may be subject to being taxed. No person, however, shall be required to pay a tax on motor fuel brought into this State in a quantity of thirty (30) gallons or less in a fuel tank, with a capacity of not more than thirty (30) gallons, when said fuel is connected with and feeds the carburetor of said motor vehicle and the motor fuel contained therein is used in the operation of said motor vehicle and not otherwise."

Sec. 4. Section (2), Article 9.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(2) The Comptroller may also authorize and permit any licensed distributor to make sales or distributions of motor fuel without collecting the tax to any other licensed distributor purchasing said motor fuel for resale or distribution of said product at wholesale when said other licensed distributor holds a valid distributor's permit and has, in the opinion of the Comptroller, a satisfactory and sufficient bond to justify such tax-free purchases.

"Every such distributor who shall be authorized and permitted to purchase motor fuel without paying the tax thereon for the purpose of resale or distribution of said products at wholesale, shall collect and pay over to the State of Texas at the time and in the manner provided in this Chapter, the tax imposed by Article 9.02 of this Chapter upon the first sale or distribution of said motor fuel made thereafter for any purpose other than a tax-free sale authorized by the Comptroller, and shall pay said tax at the rate aforesaid upon each gallon of motor fuel used or unaccounted for by said distributor during the calendar month next preceeding the month said tax payment is required to be made, it being the intent hereof that said distributor shall on or before the 25th day of each calendar month report and pay to the State of Texas all taxes due on motor fuel purchased tax-free and thereafter sold, resold, distributed, used or unaccounted for during the calendar month next preceding. Any motor fuel purchased tax-free which is unaccounted for at the end of each calendar month shall be prima facie presumed to have been sold or used for taxable purposes.

"The Comptroller may, upon request from any distributor, issue a certificate of authority to make sales

of motor fuel without collecting the tax, under the terms and conditions provided in this Chapter, which certificate shall show the date issued, the names of the seller and purchaser of said motor fuel, the quantities authorized, and the period of time and the conditions under which said motor fuel may be sold and distributed tax-free to the purchaser thereof, and any distributor who shall make sales of motor fuel in Texas without holding a valid certificate of authority or who shall make sales of motor fuel in excess of the quantities authorized shall be liable for the tax imposed upon the first sale or distribution of said motor fuel. The certificate of authority to make tax-free sales of motor fuel shall be subject to revocation for failure or refusal by the seller or purchaser of said motor fuel to comply with any provisions of this Article or any rule and regulation duly promulgated by the Comptroller, or for the violation of the same, and said certificate of authority shall be revoked forthwith upon the failure of any distributor to report and pay all taxes due and owing the State of Texas within the time prescribed by this Article, or at the time fixed by the Comptroller for making periodical reports and tax payments, and no further tax-free sales shall be made to a distributor named in any certificate of authority after said certificate has been revoked until such certificate has been reinstated or a new certificate of authority has been issued."

Sec. 5. Section 1, Article 12.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1st of each year, file such reports as are required by Articles 12.08 and 12.19 and pay in advance to the Comptroller a franchise tax for the year following which shall be based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

(a) Basic Tax

"(i) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, the sum of which for the purposes of

this Chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02 of this Chapter.

"As used in this Chapter, the phrase 'stated capital' shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

"(ii) Tax on Debt. In addition to the franchise tax due and payable under Subsection (1)(a)(i) of Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under said Subsection (i) for the privilege of doing business in the corporate form during the periods listed below, an additional tax as follows:

"For the Period from:	An additional tax for the year of:
May 1, 1968, to and including April 30, 1969,	\$2.25
May 1, 1969, to and including April 30, 1970,	\$2.00
May 1, 1970, to and including April 30, 1971,	\$1.50
May 1, 1971, to and including April 30, 1972,	\$1.00
May 1, 1972, to and including April 30, 1973	\$0.50
per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of taxable debt allocable to Texas.	

"For the purposes of this Subsection (1)(a)(ii), 'Taxable Debt' shall mean outstanding bonds, notes and debentures, including all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue and all such instruments which bear a maturity date of less than one (1) year from date of issue which represents indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, but this term shall not include instruments which have been previously classified as surplus.

"Taxable debt allocable to Texas shall be determined by using the same percentage used to allocate taxable capital to Texas under the provisions of Article 12.02.

"The additional franchise tax levied by this Subsection (1)(a)(ii) shall expire after April 30, 1973.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the

assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. 6. Sec. 3, Article 12.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(3) Except as provided in preceding Subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of public utilities as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

"(a) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

"(b) Three Dollars (\$3) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

"(c) Thirty-five Dollars (\$35).

Sec. 7. Section 1, Article 12.19, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may to elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

"If Total Assets		The Tax Shall Be
Are at Least	But Less Than	
\$ 0.00	\$ 15,000.00	\$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00
30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	60,000.00	140.00
60,000.00	70,000.00	165.00
70,000.00	80,000.00	190.00
80,000.00	90,000.00	215.00
90,000.00	100,000.00	240.00
100,000.00	110,000.00	265.00

110,000.00	120,000.00	290.00
120,000.00	130,000.00	315.00
130,000.00	140,000.00	340.00
140,000.00	150,000.00	365.00"

Sec. 8. Section (B), Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

(B) Items Taxed Under Existing Statutes.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of (a) oil as taxed under the provisions of Chapter 4 of this Title; (b) sulphur as taxed under the provisions of Chapter 5 of this Title; (c) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this title; (d) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title; (e) cement as taxed under the provisions of Chapter 18 of this Title; and (f) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor.

(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of telephone and telegraph service.

Sec. 9. Section 15(e) of Article I of the Texas Liquor Control Act, Chapter 467, Acts of the 44th Legislature, 2nd Called Session, 1935, as last

amended by Section 1, Chapter 262, Acts of the 57th Legislature, Regular Session, 1961 (Article 666-15(e), Vernon's Texas Penal Code), is amended by adding a new Section (12) to read:

"(12) In addition to all other taxes levied and assessed by the Texas Liquor Control Act, there is hereby levied and assessed an occupation tax of ten percent (10%) of the gross amount of money received by the holder of a Private Club Registration Permit, or any of its officers, directors, agents, servants or employees, from the serving or storing for consumption on the premises where stored distilled spirits and wine containing alcohol in excess of fourteen percent (14%) by volume. The holder of the Private Club Registration Permit, and any of its officers or directors, shall be liable for this tax.

"Except as expressly provided herein, the method and manner and time of payment of the taxes levied and assessed herein shall be determined by rule and regulation of the Board. The Board shall, by rule and regulation, determine the records to be made and kept, the reports to be submitted, the bonds to be made, and the procedures to be followed in order to assure that the taxes levied and assessed above are paid and collected.

"Any person who fails to pay the taxes levied and assessed above in the method, manner or time prescribed by rule or regulation of the Board, or who fails to make and keep records, to make and submit reports, to maintain bond, or to follow the procedures required by rule and regulation of the Board shall be guilty of a misdemeanor and upon conviction by punished by a fine of not less than One Hundred Dollars (\$100) or more than One Thousand Dollars (\$1,000), or by imprisonment in jail for not less than thirty (30) days nor more than one (1) year.

"All taxes collected under this Section shall be deposited in the State Treasury to the credit of the General Revenue Fund."

Sec. 10. Article 21.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.01. REPORTS REQUIRED

"Every person, firm, association of persons or corporation owning or operating any place of amusement or business which charges a price or fee

for admission on which a tax is imposed by this Chapter shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter or any admission collected for dances, moving pictures, operas, plays and musical entertainments all the proceeds of which inure exclusively to the benefit of State, religious, educational or charitable institutions, societies, or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual, or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock, or for admission to any rodeo; and provided further, that an operator of entertainments such as motion pictures, operas, plays and like amusements where the admission charge is less than One Dollar and Five Cents (\$1.05) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Chapter. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided."

Sec. 11. Article 21.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.02. TAX IMPOSED

"(1) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays, concerts, musical shows, skating exhibitions and shows, skating rinks open to skating by patrons, and like amusements, where the admission charged

is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen Cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

"(2) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, boat racing, and like mechanical or animal contests and exhibitions.

"(3) There is hereby levied on the amounts paid for admission by season ticket, subscription, or lease for admission to any place, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place would be subject to taxation under the provisions of this Chapter.

"(4) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected."

Sec. 12. Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, is amended by adding Chapter 26 to read as follows:

"CHAPTER 26

"ENTERTAINMENT TAX

"Article 26.01. TAX IMPOSED

"(a) There is hereby imposed an entertainment tax at the rate of five percent on receipts collected by any person, except as specifically exempted under this chapter, which are collected as

"(1) a charge for admission to any sporting event or athletic contest in which the participants are professionals or receive monetary compensation for participating, including baseball, football, basketball, soccer, hockey, rugby, polo, boxing, wrestling, and track and field meets; or

"(2) a charge denominated as an admission charge shall include a cover charge, service charge and any other charge or charges by any other name when made by a dance hall, private club, night-club, bottle club, lounge, cabaret, tavern, dinner club, or dining room when the charge is made for the privilege of any use of the facilities of the person making the charge in order to consume food or beverages, to dance, or to view a floor show or other entertainment; or

"(3) a charge for admission to any natural or man-made phenomena, object or structure or curiosity or interest, such as caverns, amusement parks, buildings, ruins and guided tours of such natural or man-made phenomena, object, structure, curiosity or interest, and shall include charges made for the privilege of participating in or using any of the additional amusements therein or connected therewith.

"(b) 'Receipts' or 'receipts from admission' as used in this chapter means the total consideration received by a taxpayer as defined in Article 26.03 of this chapter, whether the consideration is paid as dues; under the terms of a subscription, membership or other card, season or other ticket, or lease for admission; or without the delivery or use of any receipt, ticket, or other written instrument or devise. 'Receipts' or 'receipts from admission' as used in this chapter does not include that portion of the consideration collected as federal excise tax.

"(c) The tax imposed by this chapter is in addition to any other excise tax imposed by the state, any political subdivision of the state, or any city.

"Article 26.02. EXEMPTIONS

"(a) There shall be exempt from the tax imposed by this chapter

"(1) receipts from admissions otherwise taxable if all of the net receipts inure exclusively to the benefit of state, religious, educational, or charitable institutions, societies, or organizations;

"(2) receipts from any rodeo, regardless of whether the participants are amateurs or professional performers.

"(b) For the purpose of the proper administration of this chapter, it shall be presumed that all places of business and all persons who collect receipts or receipts from admission subject to tax under Article 26.01 of this chapter are liable for the tax unless the contrary is established. The burden of proving that receipts are exempt under the provisions of this article is upon the person collecting or receiving the receipts, unless he has obtained from the comptroller an exemption certificate.

"Article 26.03. METHOD OF COLLECTION

"(a) The entertainment tax imposed by this chapter shall be added to the receipts from admission, and when added, the tax shall become a

part of the admission charge. The tax shall be collected by the taxpayer, as herein defined, from the payees of the receipts from admission, and said tax shall be reported and paid to the state by the taxpayer in the manner and at the times provided for herein. The granting of a permit to an owner or operator to collect such taxes for and in behalf of the state shall be deemed to establish a fiduciary relationship between such permit holder and the state.

"(b) Except as hereinafter provided, the tax imposed by this chapter shall be due and payable quarterly at the office of the comptroller at Austin on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month.

"(c) Any person, firm, association, or corporation required to obtain a permit in accordance with Article 26.05 of this chapter shall be referred to herein as the taxpayer and shall be subject to the liabilities and responsibilities imposed by this chapter.

"(d) The taxpayer shall deduct and withhold from the taxes otherwise due from him two percent (2%) of such taxes otherwise due or One Thousand Dollars (\$1,000), whichever is the lesser, to reimburse himself for the cost of collecting the tax. In the event the payment of any taxes due under the applicable provisions of this chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this chapter, the taxpayer forfeits his claim and right to the discount of two percent (2%) or One Thousand Dollars (\$1,000), as the case may be.

"(e) The taxpayer shall pay to the state at the office of the comptroller at Austin the amount of taxes required to be collected under this chapter on the dates on which said taxes are due under the applicable provisions of this chapter. At the same time that the tax herein is payable, the taxpayer shall file with the comptroller at Austin a report on such form as the comptroller shall from time to time prescribe, showing the receipts from admission and the price or charge for each class of admission.

"(f) The tax imposed by this chapter upon the receipts from admission shall be payable on the dates set forth in paragraph (b) of this article, except in the case of taxes due on receipts from admission to events or

contests not held at a regular fixed place or establishment, in which case the tax shall be payable on the day following the event or contest (excluding Saturdays, Sundays, and legal holidays). However, the taxpayer shall have the right to request an extension of time within which to pay the tax or file such report.

"(g) The comptroller may require returns or payments to be made at times other than provided in this chapter. The comptroller may upon good cause shown extend for a period not to exceed thirty (30) days the time for making returns or payments.

"Article 26.04. RECORDS REQUIRED

"(a) The taxpayer shall make and keep records in Texas at an address shown on the reports to be filed with the comptroller for a period of two years. The records shall correctly reflect (1) the date of the event for which an admission charge was made; (2) the charge for admission; (3) the number of patrons admitted; and (4) if admitted gratuitously, the number of patrons so admitted. The records shall be open to inspection by the comptroller and the attorney general, or their duly authorized agents.

(b) In addition, for the purpose of enabling the comptroller or his authorized agent to determine the amount of tax collected and payable to the state, or which should have been collected and paid to the state, or to determine whether a tax liability has been incurred, the comptroller or his authorized representative shall have the right to inspect any premises, and any books and records that may be kept incident to the conduct of any business or venture having receipts subject to tax under this chapter, as well as the books and records required to be kept by this chapter.

"(c) For the foregoing purposes, the comptroller or his duly authorized agent shall also have the right to remain upon said premises for such length of time as is necessary to determine fully whether a tax liability has been incurred and the amount thereof. If the taxpayer fails to keep the required records or refuses to allow their inspection, the taxpayer shall forfeit to the State of Texas as a penalty not more than One Thousand Dollars (\$1,000) for each violation, and each violation shall constitute a separate offense. The venue for the collection of such penalties shall be in Travis County, Texas.

"Article 26.05. PERMIT REQUIRED

"(a) From and after the effective date of this chapter, every person, firm, association, or corporation owning or operating, or who desires to own or operate, any place of business or venture which makes a charge for admission shall file with the comptroller a duly acknowledged application for an owner's or operator's permit. The application shall be accompanied by an annual fee of Ten Dollars (\$10) to pay the expenses of administering and enforcing the provisions of this chapter. The permit shall be on the form prescribed by the comptroller. An application shall be filed and a permit obtained for all places of business and ventures charging admission owned or operated by the applicant. The application form shall set forth the name or names under which such owner or operator transacts or intends to transact each business or venture, as well as such owner's or operator's principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of the corporation or the members of the partnership or association, as the case may be, and their office, street, or post office address, as well as such other information as the comptroller may reasonably require. No one shall operate any place of business or venture charging admission until the application has been filed and a permit issued. The permit shall not be assignable. Only one permit shall be required of an owner or operator for all places of business and ventures to be operated. The application for a permit and the permit issued shall designate each location of the place of business or venture to be operated, by street address and town, and the permit may be amended from time to time in order to designate additional locations without the payment of an additional fee. No place of business or venture subject to the tax imposed by this chapter shall be operated unless the location of such place of business or venture is designated on a permit. Each applicant shall be issued a permit for each place of business or venture and shall display the permit conspicuously at the place.

"(b) Upon receipt of the application and the posting of bond required by Article 26.07 of this chapter, the comptroller shall issue to the owner or operator a nonassignable, consecu-

tively-numbered permit authorizing the operation of a designated place or places of business or ventures charging admission in this state from the date of the issuance of said permit, until and including the following August 31. On or before September 1 of each year, and before any owner or operator shall operate a place of business or venture in this state after August 31 of that year, an application shall be filed, a bond posted, and a permit obtained for the succeeding fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this chapter. If such permit is cancelled or suspended, said owner or operator shall not operate or allow to be operated any place of business or venture charging admission within the state until a new permit is granted or the original permit is reinstated. However, no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this chapter.

"(c) In the event that a place of business or a venture for which admission is charged is not held at a regular fixed place or establishment, then the owner or operator shall make application for a permit as required in Paragraph (a) of this article within a period of twenty (20) days prior to the date contemplated for the event or contest for which admission is charged is scheduled to begin. The permit shall be effective for a period no longer than the period set forth in the application as being the period during which the event or contest will be held. Such application shall also set forth the location or locations, where the event or contest will be held and the permit shall disclose such location or locations.

"(d) A corporation or organization which is otherwise exempt from the application of this chapter may apply and receive from the comptroller an exemption certificate on a form prescribed by the comptroller upon submission of satisfactory evidence that such corporation or organization is exempt. The application for exemption shall designate the date or dates and place of the activity for which exemption is claimed. Issuance of an exemption certificate shall be presumptive only of the exempt nature

of the activity for which the certificate was issued.

"(e) Upon receipt of an appropriate application for permit and bond, the comptroller shall not refuse to issue a permit because the applicant is contesting in good faith an admission tax otherwise due for a period prior to the effective date of this chapter. However, nothing contained herein shall be construed as meaning that any such tax is forgiven. All admission or entertainment taxes, penalties, and interest accruing to the state by virtue of any of the reenacted or repealed provisions set out in this chapter before the effective date of this chapter shall be and remain valid and binding obligations to the state for all taxes, penalties, and interest accruing under the provisions of all prior laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the state are hereby expressly preserved and declared to be legal and valid obligations to the state.

"Article 26.06. CANCELLATION OF PERMIT

"(a) The comptroller, or any duly authorized agent of the comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of, any owner's or operator's permit or exemption certificate as provided under the terms of this chapter to any person who has violated or has failed to comply with any of the provisions of this chapter, including any of the following offenses: (1) failure or refusal to remit or pay to the state any excise tax imposed by this chapter, which tax is shown to be owing to the state by a duly verified audit made by a duly authorized agent of the comptroller from any report filed with the comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this chapter; (2) failure to file any return or report required under the provisions of this chapter; (3) making and filing with the comptroller of any false or incomplete application, return or report required under the provisions of this chapter; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) falsifying, destroying, mutilating, removing from the state, or secreting any books and records, or any application, return, or report; (6) refusing to permit the comptroller, attorney general, or their duly

authorized agents to inspect, audit, and examine any books and records required to be kept or to inspect any premises they are authorized to inspect; (7) engaging in any business or venture requiring a permit under the provisions of this chapter without obtaining and possessing a valid permit.

"(b) Before any permit or exemption certificate may be cancelled, or the issuance, reinstatement, or extension thereof refused, the comptroller shall give the applicant or permittee not less than fifteen (15) days' notice of a hearing at the office of the comptroller in Austin granting the applicant or permittee an opportunity to show cause before the comptroller, or his duly authorized agent, why such action should not be taken. The notice shall be in writing and may be mailed by United States registered mail to the applicant or permittee at his last known address, or may be delivered to him personally by a duly authorized agent of the comptroller, and no other notice shall be necessary. The comptroller may prescribe rules of procedure and evidence for such hearings.

"(c) In the event that the permit or exemption certificate is cancelled by the comptroller, or his duly authorized agent after such hearing is held or opportunity to be heard has been given, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the state except by the provisions of this paragraph, shall become due and payable concurrently with the cancellation of the permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports he filed and ending with the date of cancellation, and shall pay to the state all taxes which have accrued under this chapter.

"After being given notice of cancellation, it shall be unlawful for any person to continue to operate a place of business or venture charging admission under the cancelled permit.

"(d) An appeal from any order of the comptroller or his duly authorized agent cancelling or refusing the issuance, extension, or reinstatement of any permit or exemption certificate may be taken to a district court of Travis County by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits except that the following exceptions shall be appli-

cable: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the comptroller or his duly authorized agent; (2) such proceedings shall have precedence over all other causes of a different nature; and (3) the order, decision, or ruling of the comptroller, or his duly authorized agent may for good cause shown be suspended or modified by the court pending a trial on the merits. Any suspension or modification shall not relieve the taxpayer or his surety of their obligations under this chapter or under any bond posted on behalf of such taxpayer.

"Article 26.07. BOND REQUIRED

"(a) Before any permit shall be issued and before engaging in the operation of a place of business or a venture charging admission on which a tax is required to be paid under this chapter every owner or operator shall execute and file with the comptroller a good and sufficient surety bond in the amount of One Thousand Dollars (\$1,000), which shall run concurrently with the permit. The bond shall be signed by the owner or operator and a surety company or companies authorized to do business in this state. The bond shall be payable to the State of Texas and the conditions, and form of the bond shall be prescribed by the comptroller. Each bond shall provide for the performance of all obligations, and the payment at Austin of all taxes due, and all costs, penalties, and interest provided in this chapter; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force, shall not for any fiscal year exceed the penal sum named therein; provided, further, that any such bond, continuous in form, may be, if sufficient and acceptable to the comptroller, continued in effect, by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit; and provided, further, that the said renewal certificate, when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. After six (6) months from the effective date thereof, the amount of the bond shall be adjusted to a sum equal to no more than two (2) times the highest tax said owner or operator may be liable to the state for any quarter during the preceding

six (6) months, or Ten Thousand Dollars (\$10,000), whichever is the lesser. The comptroller is hereby given the authority, in the appropriate case and upon submission of satisfactory evidence that the revenues will be protected, to reduce the amount of the bond below the maximums provided for herein; provided, however, that the amount of the bond shall never be less than One Hundred Dollars (\$100).

"(b) The comptroller shall have the right, if the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond within the maximums provided for herein. When said new bond has been furnished, the comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution on any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect adversely to the comptroller the validity of any bond. Should any owner or operator fail or refuse to supply a new or additional bond within thirty (30) days after his receipt of notice of the comptroller's demand for a new or additional bond, the owner or operator's permit shall be cancelled by the comptroller.

"(c) Any surety or any bond furnished by any owner or operator under this article shall be discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date on which the surety shall have lodged with the comptroller a written request for discharge. Provided, however, that the request shall not operate to release the surety from any liability already accrued, or which shall accrue prior to the expiration of said thirty-day period. The comptroller shall, promptly on the receipt of notice of said request by the surety, notify the owner or operator of the surety's request, and unless such owner or operator shall within thirty (30) days from the date of receipt of said notice file with the comptroller a new bond with a surety duly authorized to do business in this state, in the amount and form required by this article, the comptroller shall proceed to cancel the permit of the owner or operator in the manner provided in this chapter. If the new bond shall be furnished by said owner or operator as above provided, the comptroller shall cancel the bond for which the new bond is substituted.

"(d) In lieu of giving a bond, any owner or operator may deposit in the suspense account of the state treasury money in the amount of the bond that may be otherwise required by the terms of this article which shall not be released until a bond is executed in lieu thereof, or until the comptroller has made an audit of the owner or operator's records and authorized the same released.

"(e) Suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of the owner or operator, or without making the owner or operator, as principal obligor in said bond, a party to the suit.

"Article 26.08. PENALTIES

"(a) If any taxpayer fails to pay the tax or file a report as required by this chapter when the same shall be due, he shall forfeit five percent (5%) of the amount of tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five percent (5%) of the tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes and accrued penalty shall draw interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of penalties shall be in Travis County.

"(b) All taxes, penalties, and cost of auditing, as provided for herein, due, or that might become due by any taxpayer to the state shall be and become a preferred lien, first and prior to all other existing liens, contract or statutory, legal or equitable and regardless of the time the lien originated upon all the property devoted to or used in the business or venture of the taxpayer charging admission, which property includes land, buildings, fixtures, equipment, trucks, cars, or other motor vehicles, or any other equipment used in carrying on such business or venture. The Attorney General of the State of Texas may file suit for the collection of taxes, penalty and interest and for the foreclosure of the lien herein provided in any court of competent jurisdiction in Travis County, Texas. If any person, firm, corporation, or association of persons are alleged to be liable for any tax imposed by this chapter and who fails or refuses to pay such tax and it becomes necessary to file suit or intervene in any manner for the establishment or collection of said taxes, claims or penal-

ties, a claim showing the amount of the tax due the state certified to by the comptroller of public accounts or his chief clerk shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided however that the incorrectness of said claim may be shown.

"The lien provided for herein shall not be valid or effective against any mortgagee, holder of a deed of trust, purchaser, pledgee, or judgment creditor acquiring title, lien, or other right or interest in the property covered by the lien provided for herein more than twelve (12) months immediately preceding the filing or recording of notice of the lien provided for herein.

"(c) Any taxpayer required to file a report or keep records as provided in this chapter, who fails or refuses to file the report on the dates provided in this chapter, or make and keep such records, or who violates any other provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of (\$25) nor more than One Hundred Dollars (\$100) and the fine is in addition to the civil penalties provided in Article 26.08 of this chapter. The venue for prosecutions under this paragraph shall be in Travis County.

"Article 26.09. RESTRAINING ORDERS AND INJUNCTIONS

"Any owner or operator of a place of business or venture charging admission who does not have an exemption certificate issued by the comptroller as provided for in this chapter, and who fails to obtain a permit and post bond in accordance with the provisions of this chapter, may be restrained or enjoined by court order from operating the place of business or venture without a permit and bond, or, if the owner or operator is entitled to an exemption certificate, without having a certificate. Suits for any restraining order or injunction shall be filed by the attorney general in a court of competent jurisdiction in Travis County. In the event that the owner or operator has already commenced the business or venture, then the attorney general may seek in his suit any taxes due under this chapter from the owner or operator as additional relief.

"This article shall be cumulative of and in addition to any other provisions of law authorizing any kind of injunctive relief.

"Article 26.10. PROMULGATION OF RULES AND REGULATIONS BY COMPTROLLER

"The comptroller is vested with authority to promulgate rules and regulations, not inconsistent with this chapter, to enforce the provisions of this chapter and to facilitate the collection of taxes imposed."

Section 13. Section (D), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(D) Receipts.

"(1) 'Receipts' means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers or the total amount charged for a taxable service, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the tangible personal property sold. However, in accordance with such rules and regulations as the Comptroller may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the tangible personal property, and has resold the tangible personal property prior to making any use of the tangible personal property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the tangible personal property.

"(b) The cost of the materials used, labor or service costs, interest paid, losses or any other expenses.

"(c) The cost of transportation of the tangible personal property prior to its sale to the purchaser.

"(d) The cost of transportation incident to the performance of a taxable service.

"(2) 'Receipts' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) Sales price of tangible personal property returned by customers when the full sales price is refunded either in cash or credit.

"(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

"(f) Charges for transportation of tangible personal property after sale."

Sec. 14. Section (F), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session 1963, is amended to read as follows:

"(F) Occasional Sale. 'Occasional Sales' means:

"(1) One or two sales of tangible personal property or taxable services at retail during any twelve-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling such tangible personal property or taxable services at retail.

"(2) The sale of the entire operating assets of a business or of a separate division, branch or identifiable segment of a business. For the purpose of this Subsection a 'separate division, branch or identifiable segment' shall be deemed to exist if prior to its sale the income and expenses attributable to such 'separate division, branch or identifiable segment' could be separately ascertained from the books of account or record. The purpose of this Subsection is to clarify existing law and merely expresses the original intention of the Legislature.

"(3) Any transfer of all or substantially all the property held or used by a person in the course of an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this Subsection, stockholders, bondholders, partners or other persons holding an

interest in a corporation or other entity are regarded as having the 'real or ultimate ownership' of the property of such corporation or other entity."

Sec. 15. Section (G), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(G) Purchase. 'Purchase' means:

"(1) Any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"(2) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

"(3) A transfer, for a consideration, of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

"(4) The acceptance or utilization of any taxable service for a consideration."

Sec. 16. Section (I), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(I) Retail Sale or Sale at Retail. 'Retail Sale' or 'Sale at Retail' means:

"(1) Any sale of tangible personal property or taxable service.

"(2) The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State. The person making the delivery in such cases shall include the retail selling price of the tangible personal property in his receipts."

Sec. 17. Subsection (1), Section (J), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) 'Retailer' includes:

"(a) Every seller engaged in the

business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

"(b) Every person making more than two (2) retail sales of tangible personal property during any twelve-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

"(c) Every person who leases or rents to another tangible personal property for storage, use or other consumption, except that person engaged in the leasing or licensing of motion picture films of any kind or character to motion picture theatres, television stations and others shall be liable for the tax levied under the provisions of this law, and they shall not pass said tax along to the person or persons to whom they lease or license said motion picture films.

"(d) Every person selling taxable services."

Sec. 18. Subsection (1), Section (K), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) 'Sale' means and includes any transfer of title or possession, or segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. 'Sale' includes the performance of a taxable service for a consideration."

Sec. 19. Section (L), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(L) Sales Price.

"(1) 'Sales Price' means the total amount for which tangible personal property or a taxable service is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the tangible personal property sold.

"(b) The cost of material used,

labor or service costs, interest paid, losses, or any other expenses.

"(c) The cost of transportation of the tangible personal property prior to its sale or purchase.

"(d) The cost of transportation incident to the performance of a taxable service.

"(2) The total amount for which tangible personal property is sold includes all of the following:

"(a) Any services which are a part of the sale.

"(b) Any amount for which credit is given to the purchaser by the seller.

"(3) 'Sales Price' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit.

"(c) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

"(f) Charges for transportation of tangible personal property after sale."

Sec. 20. Section (M), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(M) Seller. 'Seller' includes every person engaged in the business of selling leasing or renting tangible personal property or taxable services of a kind, the receipts from the retail sale, lease or rental of which are required to be included in the measure of the limited sales tax."

Sec. 21. Section (R), Article 20.01, Title 122A, Taxation-General, Revised

Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(R) Use. 'Use' includes the exercise of any right or power over tangible personal property incident to the ownership of that tangible personal property except that it does not include the sale of that tangible personal property in the regular course of business or the transfer of tangible personal property as an integral part of a taxable service rendered in the regular course of business. 'Use' specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such except as provided in Article 20.01(T)(2)."

Sec. 22. Section (S), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(S) Sale for Resale. 'Sale for Resale' means:

"(1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it in the normal course of business either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other tangible personal property.

"(2) A sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing the tangible personal property to another person, but not if incidental to the renting or leasing of real estate.

"(3) A sale of tangible personal property to any purchaser who is purchasing the tangible personal property for the purpose of subsequently transferring it as an integral part of a taxable service."

Sec. 23. Section (T), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 20.01(T). Contractor or Repairman. 'Contractor or Repairman' shall mean any person who performs any repair services upon tangible personal property or who per-

forms any improvement upon real estate and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him and incorporated into the property of his customer, for all the purposes of this Chapter.

"There are exempted from the computation of the amount of taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by any contractor for the performance of a construction contract for the improvement of realty for any exempt organization as defined in Section 20.04(F) of this Chapter. Any such contractor may purchase, rent or lease all materials, supplies, equipment and other items incorporated into the project or the value of any such item used and/or consumed by the contractor in performing said construction contract by issuing to the retailer from whom the materials, supplies, equipment, or other items were purchased, rented, or leased an exemption certificate in lieu of any tax imposed by this Chapter."

Sec. 24. Section (U), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(U) Manufacturing. 'Manufacturing' shall mean and include every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) which it has when transferred by the manufacturer to another. 'Manufacturing' shall include the production of telephone and telegraph services."

Sec. 25. Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended by adding a new Section (V) to read as follows:

"(V) Taxable Services. 'Taxable Services' means the following:

"(1) Advertising in directories, shopper's guides, newspapers, and magazines, whether or not such publications are circulated free or without charge to the public; advertising on radio, movie, television, and outdoor signs; and point-of-purchase performance advertising;

Sec. 26. Article 20.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"Article 20.02. Imposition of Limited Sales Tax. There is hereby imposed a limited sales tax at the rate of two percent on the receipts from the sale at retail of all tangible personal property and taxable services within this state."

Sec. 27. Subsection (1), Section (B), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that any part of it will be refunded or that it will not be added to the selling price of the tangible personal property or taxable services sold. Provided, however, that this section does not prohibit any utility from billing its customers in one lump sum covering the utility sales price plus the tax imposed by this chapter."

Sec. 28. Section (F), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

"(F) Presumption of Taxability: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

"The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for the purpose of reselling, leasing or renting it in the

regular course of business or for the purpose of subsequently transferring it as an integral part of a taxable service rendered in the regular course of business."

Sec. 29. Section (G), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, 1963, is amended to read as follows:

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling, leasing or renting tangible personal property or taxable services. A resale certificate may be given by a purchaser, who at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be resold, leased, rented, or transferred in the regular course of business or will be used for some other purpose."

Sec. 30. Subdivision (1), Section (H), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(1) The certificate shall:

"(a) Be signed by and bear the name and address of the purchaser.

"(b) Indicate the number of the permit issued to the purchaser or that an application for such permit is pending before the Comptroller.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business, or transferred as an integral part of a taxable service rendered in the regular course of business."

Sec. 31. Section (I), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(I) Liability of Purchaser Giving Resale Certificate. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course

of business or for transfer as an integral part of a taxable service in the regular course of business the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the tangible personal property to him shall be deemed the measure of the tax."

Sec. 32. Section (J), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(J) Improper Use of Resale Certificates. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business or for transfer by him as an integral part of a taxable service rendered in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter."

Sec. 33. Sections (G), (H), (I), and (J), of Article 20.03, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, are amended to read as follows:

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property or taxable services. A resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business, transfer it as an integral part of a taxable service rendered in the regular course of business or is unable to ascertain at the time of purchase whether the tangible personal property will be sold, leased or rented or will be used for some other purpose.

"(H) Form and Contents of Resale Certificate.

"(1) The certificate shall:

"(a) Be signed and bear the name and address of the purchaser.

"(b) Indicate the number of the permit issued to the purchaser or that an applicant for such permit is pending before the Comptroller.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

"(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

"(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale, lease or rental, in the regular course of business, the use shall be taxable to the purchaser as of the time when the tangible personal property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

"(J) Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for tangible personal property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter."

Sec. 34. Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 464, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

"Article 20.04. Exemptions.

"(A) 'Exempted from taxes imposed by this Chapter' means exempted from the computation of the amount of the taxes imposed.

"(B) Exemption Certificates. If a purchaser certifies in writing to a seller that the tangible personal property or taxable services purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the tangible personal property or taxable services in some other manner or for some other purpose, the purchaser shall be liable for payment of the limited sales tax as if he were a retailer making a retail sale of the tangible personal property or taxable services to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

"Any person who gives an exemp-

tion certificate to the seller for tangible personal property or taxable services which he knows at the time of purchase, will be used in a manner other than that expressed in the exemption certificate is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

"(C) Constitutional and Statutory Exemptions. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this state of tangible personal property and taxable services the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States.

"(D) Items Taxed Under Other Statutes.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of:

"(a) oil as taxed under the provisions of Chapter 4 of this Title;

"(b) sulphur as taxed under the provisions of Chapter 5 of this Title;

"(e) motor fuels as defined, taxed, or exempted under the provisions of Chapter 9 of this Title;

"(f) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title;

"(g) cement as taxed under the provisions of Chapter 18 of this Title; and

"(h) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs, or counters or from trays, glasses, dishes or other tableware provided by the vendor.

"(2) There are exempted from the taxes imposed by this Chapter the re-

ceipts from the sale, production, distribution, lease, or rental of and the storage, use or other consumption in this state of water.

"(E) Property Used in Manufacturing, Packaging and Containers.

"(1) Tangible Personal Property Used in Manufacturing. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of:

"(a) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed or fabricated for ultimate sale at retail within or without this State; and

"(b) Tangible personal property used or consumed in or during any phase of such actual manufacturing, processing or fabricating operation, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operations. Chemicals, catalysts, and other materials which are used during such operations and which are used for the purpose of producing or inducing a chemical or physical change during such operations or for removing impurities or otherwise placing a product in a more marketable condition are included within the exemption, as are other articles of tangible personal property used in such a manner as to be necessary or essential in the actual manufacturing, processing, or fabricating operations. The exemption provided herein does not include the following:

"(i) Machinery, equipment and replacement parts and accessories therefor, having a useful life when new in excess of six (6) months;

"(ii) Machinery, equipment, materials and supplies used in a manner that is merely incidental to the manufacturing, processing or fabricating operation such as intraplant transportation equipment, and maintenance and janitorial equipment and supplies;

"(iii) Hand tools such as hammers, wrenches, saws, etc.; and

"(iv) Tangible Personal property used by manufacturer, processor or fabricator in any activities other than the actual manufacturing, processing or fabricating operation such as office equipment and supplies, equipment and supplies used in selling or distributing activities, in re-

search and development of new products, or in transportation activities.

"(2) Wrapping, Packing and Packaging Supplies.

"(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing or packaging any tangible personal property for the purpose of expediting or furthering in any way the sale of that property.

"(b) For the purpose of this Section, wrapping, packing and packaging supplies shall include, but shall not be limited to:

"(1) Wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, labels, staples, glue and mailing tubes.

"(2) Property used inside a package in order to shape, form, preserve, stabilize or protect the contents, such as, but not limited to, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay and laths.

"(3) Containers.

"(a) There are exempted from the taxes imposed by this Chapter the receipts of sales, leases, or rentals of, and the storage, use or other consumption in this State of:

"(1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

"(2) Containers when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

"(3) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

"(a) As used in this Article, the term 'returnable containers' means containers of a kind customarily returned by the buyer of the contents for re-use. All other containers are 'nonreturnable containers.'

"(F) Certain Meals and Food Products. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of:

"(1) Meals and food products (including soft drinks and candy) for human consumption served by public or private schools, school districts, student organizations, or Parent-

Teacher Associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school during the regular school day.

"(2) Meals and food products (including soft drinks and candy) for human consumption when sold by a church or at a function of said church.

"(3) Meals and food products (including soft drinks and candy) for human consumption when served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings.

"(G) Interstate Shipments.

"(1) Property Shipped Outside State Pursuant to Sales Contract; Delivery by Retailer. There are exempted from the taxes imposed by this Chapter receipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside this State by the retailer by means of:

"(a) Facilities operated by the retailer.

"(b) Delivery by the retailer to a carrier for shipment to a consignee at such point; or

"(c) Delivery by the retailer to a customs broker or forwarding agent for shipment outside this State.

"(2) Common Carriers. There are exempted from the computation of the limited sales tax, the receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and the tangible personal property is actually transported to the out-of-State destination for use by the carrier in the conduct of its business as a common carrier outside the State of Texas.

"(3) Special Use Tax Exemption. The use tax imposed herein shall not apply to:

"(a) The use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as a licensed and certified carrier of persons or property.

"(b) The temporary storage in this State of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically at-

tached to or incorporated into other tangible personal property which is used solely outside this State.

"(c) The storage, use or consumption of tangible personal property which is acquired outside this State, the sale, lease or rental or the storage, use or consumption of which tangible personal property would be exempt from the limited sales or use tax were it purchased within this State.

"(d) The storage and use, in this State, of tangible personal property acquired outside this State for use as a repair or replacement part for and actually affixed in this State to a self-propelled vehicle which is a licensed and certificated common carrier of persons or property."

"(H) United States; State; Political Subdivisions; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property or taxable services to, or the storage, use or other consumption of tangible personal property or taxable services by:

"(1) The United States, its unincorporated agencies and instrumentalities.

"(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

"(3) The State of Texas, its unincorporated agencies and instrumentalities.

"(4) Any county, city, special district or other political subdivision of this State.

"(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

"(6) Any contractor using and/or consuming tangible personal property in the performance of a written contract for the improvement of realty with any organization exempted in this section to the extent of the tangible personal property so used and/or consumed in the performance of such contract.

"(I) Occasional Sales. There are exempted from the taxes imposed by this Chapter the receipts from the occasional sales of tangible personal

property and the storage, use or other consumption in this State of tangible personal property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale.

"(K) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another state, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided that such other states, territories, or possessions provide for a similar tax credit for taxpayers of this State.

"(L) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of tangible personal property, the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or tangible personal property upon which a use tax has been paid by the taxpayer using said tangible personal property, is exempted from the use tax imposed by this Chapter.

"(M) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) 'Food products' shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleo-margarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa products; or any combination of the above.

"(2) 'Food products' shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;

"(b) Carbonated and noncarbonated packaged soft drinks and diluted

juices where sold in liquid or frozen form; and ice and candy.

"(c) Foods and drinks (which include meals, milk and milk products, fruits and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared or sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of business or sold ready for immediate consumption from push carts, motor vehicles, or any other form of vehicle. Provided, however, that food and drinks purchased by a common carrier for the purpose of serving passengers traveling en route aboard such carriers shall be exempt.

"(d) Alcoholic beverages of all types served or sold in any form, and any ingredients served or sold, mixed, or to be mixed, with alcoholic beverages.

"(N) Drugs, Medicines, Prosthetic Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of insulin and of drugs and medicines including alcohol when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. There are also exempted from the taxes imposed by this Chapter, the receipts from sales of and the storage, use or other consumption of braces, spectacles, hearing aids, orthopedic and dental prosthetic appliances, and replacement parts designed specifically for such products.

"(O) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this chapter the receipts from sales of, and the storage, use or other consumption of:

"(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Horses, mules and similar work animals used on farms and ranches.

"(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

"(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(4) Fungicides, insecticides, herbicides, defoliant and desiccants exclusively used or employed on farms or ranches in the production of food

for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(5) Fertilizer.

"(6) Farm machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(P) Sale for Resale: Leasing or Renting.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from all sales for resale, leasing or renting.

"(2) However, if a person purchases tangible personal property for the purpose of leasing or renting it to another person, and if he later sells it by means of an occasional sale before he has collected and paid to this State as much tax on the rental or lease charges as would have been due and payable to this State had he not purchased the tangible personal property for the purpose of so renting and leasing it, he shall, at the time of his occasional sale of said tangible personal property include in his receipts from taxable sales the amount by which his purchase price exceeded the amount of rents collected by him on said tangible personal property.

"(3) When a lessor makes a retail sale of leased tangible personal property to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, he need not collect or pay any tax on the sale price to the extent that he has collected and paid on such rental payments.

"(Q) Vessels.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships, vessels, including commercial fishing vessels, or barges, of fifty (50) tons displacement and over, built in this State, and the receipts from the sale of such ships, vessels, or barges when sold by the builder thereof.

"(2) The taxes imposed by this Chapter shall not apply to the re-

ceipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials and supplies purchased by the owners or operators of ships or vessels operating exclusively in foreign or interstate coastwise commerce, where such materials and supplies are loaded upon the ship or vessel for use or consumption in the maintenance and operation thereof; or to materials and supplies used in the repair of such ships and vessels where such materials and supplies enter into and become a component part of such ships or vessels.

"(3) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of drilling equipment used in the exploration for or production of oil, gas, sulphur, or other minerals, when such equipment is built for exclusive use outside the boundaries of the State and is removed forthwith from the State upon completion.

"(R) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to any foreign government or sold to persons who are not residents of this State.

"(S) Gas and Electricity. There are exempted from the taxes imposed by this Chapter the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for residential use or commercial use.

"For the purpose of this Subsection, the terms 'residential use' and 'commercial use' shall have the following meanings:

"'Residential use' means use in a family dwelling or building or portion thereof occupied as the home, residence, or sleeping place of one or more persons.

"'Commercial use' means use by persons engaged in selling, warehousing or distributing a commodity or service, either professional or personal.

"The term 'commercial use' specifically does not include use by persons engaged in: (1) processing tangible personal property for sale as tangible personal property; (2) ex-

ploration for or production and transportation of a material extracted from the earth; (3) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation; or, (4) electrical processes such as electroplating, electrolysis and cathodic protection.

"(T) Rolling Stock. There are exempted from the taxes imposed by this Chapter receipts from any sale, use, storage or other consumption of locomotives and rolling stock, including fuel or supplies essential to the operation of locomotives and trains.

"(U) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of books consisting wholly of writings sacred to any religious faith and religious periodicals published or distributed by any religious faith consisting wholly of writing promulgating the teachings of such faith.

"(V) Vending Machine Sales. (1) There are exempted from the taxes imposed by this Chapter the receipts from the sale of tangible personal property when sold through a coin-operated vending machine for a total consideration of twenty-four cents (24¢) or less.

"(2) There are exempted from the taxes imposed by this chapter the receipts from the sale of telephone and telegraph service paid for by inserting coins in coin-operated telephones.

"(W) Transfers Without Substantial Change in Ownership. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State, pursuant to the terms of a good faith bona fide contractual relationship, of an interest in tangible personal property to a partner, co-owner or other person who before or after such a sale owns a joint or undivided interest (with the seller) in such tangible personal property where the Texas Limited Sales, Excise and Use Tax has previously been paid on such tangible personal property.

"(X) Casing, drill pipe, tubing, and other pipe. There are exempted from the taxes imposed by this Chapter, the receipts from the sale, lease, or rental in this State of casing, drill pipe, tubing and other pipe to be used in exploration for or production of oil, gas, sulphur, and other minerals

offshore outside the territorial limits of the state.

"(Y) Property for use in offshore exploration and production. (a) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental in this State of tangible personal property for use exclusively in the exploration for or the production of oil, gas, sulphur, or other minerals offshore and outside the territorial limits of the State.

"(b) The property described in Subdivision (a) of this section may be delivered to the purchaser or lessee in this State and removed by means of his own facilities or by any other means beyond the territorial limits of the State.

"(c) Receipts from the sale, lease or rental of property described in Subdivision (a) of this section are exempt when the property is shipped to any place in the State for further assembly or fabrication, and receipts from the sale, lease or rental of such property made upon completion of the assembly or fabrication are exempt if the property is forthwith removed beyond the territorial limits of the State."

Sec. 35. Section (B), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(B) Method Retailer is to Use in Computing Tax. The limited sales tax levied under Article 20.02 shall be computed and paid to the Comptroller on the basis of three percent of all receipts from the total sales of taxable tangible personal property and taxable services sold by the retailer; provided any retailer who can establish to the satisfaction of the Comptroller that fifty per cent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is twenty-four cents (24¢) or less may exclude the receipts from such sales when reporting and paying the tax imposed by Article 20.02 of this Chapter. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and

will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the Limited Sales, Excise and Use Tax and the retailer shall be subject to assessment for back taxes, penalties and interest as provided for in this Chapter."

Section 36. Section (J), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(J) Commingled Tax and Receipts. Any retailer who established an accounting system under which the amount of tax collected pursuant to this Chapter is commingled with the receipts from the sale of tangible personal property or taxable services may determine taxable receipts in the following manner:

"(1) He shall subtract from his total receipts the receipts from any sales which are specifically exempt from or otherwise excluded from the tax imposed by this Chapter. The remainder shall consist of the receipts from the sale of taxable tangible personal property or services plus the tax collected pursuant to the provisions of this Chapter.

"(2) This remainder shall then be divided by 1.02. The answer resulting shall be the taxable gross receipts of the retailer for reporting purposes as prescribed by Section (B) of this Article.

"The sole purpose of this Section is to permit the widest possible latitude in the internal accounting system of retailers and to avoid requiring certain retailers to remit to the State a tax computed upon a base which already includes the tax imposed by this Chapter. Nothing herein shall be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by Article 20.021 of this Chapter."

Sec. 37. Section (K), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(K) Direct Payment Procedure Authorized. The Comptroller shall

establish a system of direct payment which shall be applicable to those consumers who meet the qualifications set forth in this Section and who, after approval by the Comptroller, are issued a direct payment permit. The holder of a direct payment permit may issue to all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made a blanket exemption certificate covering all future purchases made by the direct payment permit holder and such certificate shall show the number of the direct payment permit and shall specify that the direct payment permit holder agrees to accrue and pay of the State of Texas all taxes which are or may in the future be due on tangible personal property or taxable services purchased pursuant to exemption certificate.

"(1) Direct payment permits may be issued by the Comptroller after receipts of a written application for such a permit. The application shall be accompanied by:

"(a) Records establishing the fact that the applicant is a responsible person annually purchasing tangible personal property having a value when purchased equal to or in excess of Two Hundred Thousand Dollars (\$200,000) exclusive of any purchase for which a resale certificate authorized by Article 20.021 (F) of this Chapter can be or could have been issued.

"(b) A description in such detail as the Comptroller may require, of the accounting methods by which the applicant proposes to differentiate between taxable and exempt purchases.

"(c) An agreement, in a form prescribed by the Comptroller and signed by the applicant or, if a corporation, by a responsible officer thereof, under which the applicant agrees to accrue and pay all taxes imposed by Article 20.03 of this Chapter on all purchases not specifically exempted by Article 20.04 of this Chapter. The agreement shall stipulate that the applicant agrees to remit the taxes due quarterly on or before the last day of the month next succeeding each quarterly period. Such agreement shall also stipulate that the applicant agrees to waive any claim for the discount authorized by Article 20.05 (E) of this Chapter on any tax paid by him pursuant to a direct payment permit, provided, however, that if the applicant holds a valid seller's permit issued under the provisions of Article

20.021 (C) of this Chapter he shall continue to be entitled to claim the discounts authorized on sales made pursuant to such seller's permit.

"(2) A direct payment permit shall be issued to any applicant who meets, to the satisfaction of the Comptroller, the qualifications set forth in Subsection (1) of this Section. The Comptroller shall be the sole judge of whether such qualifications have been met and refusal by the Comptroller to issue a direct payment permit shall not be appealable. Any applicant may, however, request an opportunity to submit an amended application or if denied a direct payment permit, after a reasonable length of time, he may submit a new application.

"(3) Persons holding direct payment permits hold them as a matter of revocable privilege and not as a matter of right and the Comptroller may, upon his own initiative and with reasonable notice, cancel any direct payment permit. A cancellation shall not be appealable. The Comptroller shall notify a direct payment permit holder that his permit has been cancelled by registered mail and, immediately upon receipt of such notification, the direct payment permit holder shall contact all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made and notify them that the exemption certificates issued to them pursuant to the direct payment permit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of tangible personal property or taxable services are made of the cancellation of a direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notices.

"(4) Any direct payment permit holder may voluntarily relinquish such permit by notifying the Comptroller of his desire to relinquish such permit. Such voluntary relinquishment of a direct payment permit shall not be effective until a termination notice is issued by the Comptroller. Immediately upon receipt of the Comptroller's termination notice, the direct payment permit holder shall contact all of the vendors or sellers from whom purchases of tangible personal property or taxable services are made and notify them that the exemption certificates issued to them pursuant to the direct payment per-

mit are no longer valid. Failure of a person to so notify the vendors or sellers from whom purchases of tangible personal property or taxable services are made of the voluntary relinquishment of a direct payment permit shall be considered as a failure and refusal to pay the Limited Sales, Excise and Use Tax by the person required to issue such notice."

Sec. 38. Section (C) Article 20.11, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 138, Acts of the 58th Legislature, Regular Session, 1963, is amended to read as follows:

"(C) Records to be Kept by Sellers, Retailers and Others.

"(1) Every seller, every retailer, and every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the Comptroller may reasonably require.

"(2) Every such seller, retailer or person shall keep such records for not less than four (4) years from the making of such records unless the Comptroller in writing sooner authorizes their destruction."

Sec. 39. Subsection B, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"B. The sales tax portion of any local sales and use tax adopted under this Section is hereby imposed at the rate of one percent (1%) on the receipts from the sale at retail of all tangible personal property and taxable services within any city adopting such tax which property or services is subject to taxation by the State of Texas under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted, and as heretofore or hereafter amended."

Sec. 40. Subdivision (2), Subsection K, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) When such Limited Sales, Excise and Use Tax imposed by the State of Texas shall be at the rate of two percent (2%) on the receipts from the sale at retail of all tangible personal property or taxable services within this State which is subject to such tax, and the Local Sales and Use Tax imposed in any

city under authority of this Act shall be at the rate on one percent (1%) on the receipts from the sale of all tangible personal property or taxable services within such city which is subject to such tax, the total gross rate of such combined taxes in such city shall be at the rate of three percent (3%) on the receipts from the sale of all tangible personal property or taxable services within such city which is subject to such taxes. When the sale price shall involve a fraction of a dollar, the taxes shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.16	No Tax
.17 to .49	\$.01
.50 to .83	.02
.84 to 1.16	.03
1.17 to 1.49	.04
1.50 to 1.83	.05

Provided that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four per cent (4%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax."

Sec. 41. Section 5, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5. On and after the effective date of any tax imposed under the provisions of this Act, the Comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the Comptroller shall collect, in addition to the Limited Sales, Excise and Use Tax for the State of Texas, an additional tax under the authority of this Act of one percent (1%) on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of all tangible personal property or taxable services within such city which property is subject to the State Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed

by the Comptroller. On and after the effective date of any proposition to abolish such local sales and use tax in any city, the Comptroller shall comply therewith as provided in this Act."

Sec. 42. Subdivision 1, Subsection B, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"B. (1) For the purposes of the local sales tax imposed by this Act, all retail sales, leases and rentals, except sales of natural gas or electricity, are consummated at the place of business of the retailer unless the tangible personal property sold, leased, or rented is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-state destination or the taxable service is to be performed at an out-of-state location. In the event the retailer has no permanent place of business in the State, the place or places at which the retail sales, leases, or rentals are consummated for the purposes of the tax imposed by this Act shall be determined under rules and regulations prescribed by the Comptroller. If the retailer has more than one place of business in the State, the place or places at which retail sales, leases, and rentals are consummated shall be the retailer's place or places where the purchaser or lessee takes possession and removes from the retailer's premises the articles of tangible personal property, or if the retailer delivers the tangible personal property to a point designated by the purchaser or lessee, then the sales, leases, or rentals are consummated at the retailer's place or places of business from which tangible personal property is delivered to the purchaser or lessee. The sale of natural gas or electricity is consummated at the point of delivery to the consumer."

Sec. 43. Subsection C, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"C. (1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items of tangible personal property under the provisions of Article 20.04, Chapter 20, Title 122A, are hereby made applicable to the imposition and collection of the tax imposed by this Act.

"(2) The receipts from the sale, use or rental of and the storage, use or consumption in this state, of tangible personal property are exempt from the tax imposed by this Act, if:

"(a) the property is used for the performance of a written contract entered into prior to the date this Act takes effect in any city which may affect the contract, if the contract is not subject to change or modification by reason of the tax; or

"(b) the property is used pursuant to an obligation of a bid or bids submitted prior to the date this Act takes effect in any city which may affect the contract, if the bid or bids may not be withdrawn, modified or changed by reason of the tax imposed by this Act; and

"(c) if notice of a contract or bid on which an exemption is to be claimed is given by the taxpayer to the Comptroller within sixty days from the date this Act takes effect in any city which may affect the bid or contract.

"The exemption provided by this Subsection shall have no effect after three years from the date this Act takes effect in any city."

Sec. 44. EFFECTIVE DATE. With the exception of Sections 5, 6, and 7, this Act shall become effective October 1, 1968. Sections 5, 6, and 7 shall become effective May 1, 1969.

Sec. 45. EMERGENCY. The importance of this legislation and the crowded condition of the calendar in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and the Rule is hereby suspended; and that this Act take effect and be in force in accordance with Section 12, and it is so enacted.

The amendment was read.

(Pending discussion by Senator Schwartz of his amendment, Senator Hall occupied the Chair.)

(President in the Chair.)

Senator Blanchard offered the following amendment to the pending amendment by Senator Schwartz:

Amend the Pending Amendment by Schwartz by striking (2) of Sec. 8.

The amendment to the pending amendment was read.

Question on the adoption of the amendment to the pending amend-

ment, "Yeas" and "Nays" were demanded.

The amendment to the pending amendment failed of adoption by the following vote:

Yeas—13

Aikin	Kennard
Blanchard	Mauzy
Grover	Moore
Hall	Strong
Hazlewood	Wilson
Herring	Word
Hightower	

Nays—18

Bates	Harrington
Bernal	Harris
Berry	Jordan
Brooks	Patman
Christie	Ratliff
Cole	Reagan
Connally	Schwartz
Creighton	Wade
Hardeman	Watson

Senator Hardeman moved to table the pending amendment by Senator Schwartz to H. B. No. 2.

Question on the motion to table the amendment by Senator Schwartz to H. B. No. 2, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—19

Bates	Hazlewood
Berry	Herring
Blanchard	Hightower
Cole	Moore
Connally	Patman
Creighton	Ratliff
Grover	Reagan
Hall	Wade
Hardeman	Watson
Harris	

Nays—12

Aikin	Kennard
Bernal	Mauzy
Brooks	Schwartz
Christie	Strong
Harrington	Wilson
Jordan	Word

Senator Harris offered the following amendment to the bill:

Amend House Bill No. 2 by striking all below the enacting clause and substituting the following:

Section 1. Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 464, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

"Art. 20.04. Exemptions.

"(A) 'Exempted from taxes imposed by this Chapter,' as used herein, means exempted from the computation of the amount of taxes imposed.

"(B) Exemption Certificates. If a purchaser certifies in writing to a seller that the tangible personal property purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the tangible personal property in some other manner or for some other purpose, the purchaser shall be liable for payment of the limited sales tax as if he were a retailer making a retail sale of the tangible personal property at the time of such use, and the cost of the tangible personal property to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

"Any person who gives an exemption certificate to the seller for tangible personal property which he knows, at the time of purchase, will be used in a manner other than that expressed in the exemption certificate is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Article 20.12(B) of this Chapter.

"(C) Constitution and Statutory Exemptions. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of tangible personal property the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

"(D) Items Taxed Under Existing Statutes. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of (a) oil as taxed under the provisions of Chapter 4 of

this Title; (b) sulphur as taxed under the provisions of Chapter 5 of this Title; (c) cigarettes as defined and taxed under the provisions of Chapter 7 of this Title; (d) motor fuels as defined, taxed or exempted under the provisions of Chapter 9 of this title; (e) special fuels as defined, taxed or exempted under the provisions of Chapter 10 of this Title; (f) cement as taxed under the provisions of Chapter 18 of this Title; and (g) motor vehicles, trailers and semitrailers as defined and taxed under the provisions of Chapter 6 of this Title.

"(E) Written Contracts and Bids. The receipts from the sale, use or rental of, and the storage, use or other consumption in this State, of tangible personal property, the exemption of which is removed by this amendment, are exempt if:

"(1) the property is used for the performance of a written contract entered into prior to the effective date of this amendment if the contract is not subject to change or modification by reason of the tax; or

"(2) the property is used pursuant to an obligation of a bid or bids submitted prior to the effective date of this amendment which may not be withdrawn, modified or changed by reason of the tax imposed by this amendment; and

"(3) if notice of a contract or bid on which an exemption is to be claimed is given by the taxpayer to the Comptroller within sixty days from the effective date of this amendment.

"The exemption provided by this section shall have no effect after August 31, 1971, and all receipts otherwise taxable shall be taxed after that date.

"(F) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another state, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided that such other states, territories, or possessions provide for a similar tax credit for taxpayers of this State.

"(G) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of tangible personal property,

the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or tangible personal property upon which a use tax has been paid by the taxpayer using said tangible personal property, is exempted from the use tax imposed by this Chapter.

"(H) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) 'Food products' shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleo-margarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa products; or any combination of the above.

"(2) 'Food products' shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;

"(b) Foods and drinks (which include meals, milk and milk products, fruits and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared or sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of business or sold ready for immediate consumption from push carts, motor vehicles, or any other form of vehicle. Provided, however, that food and drinks purchased by a common carrier for the purpose of serving passengers traveling en route aboard such carriers shall be exempt

"(I) Drugs, Medicines, Prosthetic Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of insulin and of drugs and medicines when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. There are also exempted from the taxes imposed by this Chapter, the receipts from sales of and the storage, use or other consumption of braces, spectacles, hearing aids, orthopedic and

dental prosthetic appliances, and replacement parts designed specifically for such products."

"(J) Property Used In Manufacturing. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed or fabricated for ultimate sale at retail within or without this State."

Sec. 2. Subsection C, Section 6, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967 (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"C. (1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items of tangible personal property under the provisions of Article 20.04, Chapter 20, Title 122A, are hereby made applicable to the imposition and collection of the tax imposed by this Act.

"(2) The receipts from the sale, use or rental of and the storage, use or consumption in this state, of tangible personal property are exempt from the tax imposed by this Act, if:

"(a) the property is used for the performance of a written contract entered into prior to the date this Act takes effect in any city which may affect the contract, if the contract is not subject to change or modification by reason of the tax; or

"(b) the property is used pursuant to an obligation of a bid or bids submitted prior to the date this Act takes effect in any city which may affect the contract, if the bid or bids may not be withdrawn, modified or changed by reason of the tax imposed by this Act; and

"(c) if notice of a contract or bid on which an exemption is to be claimed is given by the taxpayer to the Comptroller within sixty days from the date this Act takes effect in any city which may affect the bid or contract.

"The exemption provided by this Subsection shall have no effect after three years from the date this Act takes effect in any city."

Sec. 3. Emergency. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an

imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

HARRIS
KENNARD

On motion of Senator Harris, and by unanimous consent, the reading of the amendment was dispensed with and he explained the amendment.

Senator Herring offered the following amendment to the pending amendment by Senator Harris:

Amend Section 1, Subsection (H) (2), of substitute by Harris to include a new subsection of Article 20.04, Taxation-General, as therein proposed to be amended. To be identified as Subsection (c) and read as follows:

"(c) Carbonated and noncarbonated packaged soft drinks and diluted juices where sold in liquid or frozen form; and ice and candy."

The amendment to the pending amendment by Senator Harris was read and was adopted.

Senator Hardeman moved to table the pending amendment as amended.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote:

Yeas—18

Aikin	Hardeman
Bates	Hazlewood
Bernal	Herring
Berry	Hightower
Blanchard	Patman
Christie	Ratliff
Connally	Reagan
Creighton	Watson
Hall	Word

Nays—12

Brooks	Kennard
Cole	Mauzy
Grover	Schwartz
Harrington	Strong
Harris	Wade
Jordan	Wilson

Absent

Moore

Senator Patman (he having voted on the prevailing side) then moved

to reconsider the vote by which the amendment by Senator Schwartz to Section 10 of H. B. No. 2 (being Committee Amendment No. 1) was adopted.

The motion prevailed.

Senator Patman offered the following substitute for the adopted substitute for Committee Amendment No. 1:

Substitute the following language for the pending Schwartz substitute for Committee Amendment No. 1:

Amend H. B. No. 2, Section 10, by changing the words and figures "Jan. 1, 1969" to "October 1, 1968."

The substitute by Senator Patman was read and was adopted.

The Committee Amendment as substituted was then adopted.

On motion of Senator Hardeman, and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

Question on the passage of H. B. No. 2 to third reading, "Yeas" and "Nays" were demanded.

The bill (H. B. No. 2) was passed to third reading by the following vote:

Yeas—18

Aikin	Hazlewood
Bates	Herring
Berry	Hightower
Christie	Patman
Cole	Ratliff
Connally	Reagan
Creighton	Strong
Hall	Watson
Hardeman	Word

Nays—13

Bernal	Kennard
Blanchard	Mauzy
Brooks	Moore
Grover	Schwartz
Harrington	Wade
Harris	Wilson
Jordan	

Motion to Place House Bill 2 on Third Reading

Senator Hardeman moved that Senate Rule 32 and the Constitutional Rule requiring bills to be read on three several days be suspended and

that H. B. No. 2 be placed on its third reading and final passage.

The motion failed of adoption by the following vote:

Yeas—19

Aikin	Hazlewood
Bates	Herring
Berry	Hightower
Blanchard	Patman
Christie	Ratliff
Cole	Reagan
Connally	Strong
Creighton	Watson
Hall	Word
Hardeman	

Nays—12

Bernal	Kennard
Brooks	Mauzy
Grover	Moore
Harrington	Schwartz
Harris	Wade
Jordan	Wilson

Memorial Resolutions

S. R. No. 158—By Senator Watson: Memorial resolution for B. E. Prickette, Sr.

S. R. No. 159—By Senator Watson: Memorial resolution for Mrs. John Curry.

S. R. No. 160—By Senator Watson: Memorial resolution for Mrs. Ida Augusta Iselt.

S. R. No. 161—By Senator Watson: Memorial resolution for J. I. Muhl.

S. R. No. 166—By Senator Hazlewood: Memorial resolution for T. C. Thompson.

S. R. No. 167—By Senator Hazlewood: Memorial resolution for Dr. L. F. Sheffy.

S. R. No. 168—By Senator Hazlewood: Memorial resolution for Robert Lee Foster.

S. R. No. 169—By Senator Hazlewood: Memorial resolution for Dr. Robert Patton Jarrett, Jr.

S. R. No. 174—By Senator Hazlewood: Memorial resolution for Monsignor John Steinlage.

S. R. No. 181—By Senator Hazlewood: Memorial resolution for Wilford Taylor, Sr.

S. R. No. 183—By Senator Hazlewood: Memorial resolution for J. Garland Smith.

Welcome and Congratulatory Resolutions

S. R. No. 164—By Senator Word: Extending welcome to J. W. Blewett, Jr., et al.

S. R. No. 165—By Senator Watson: Extending welcome and privileges of floor for the day to Dr. and Mrs. Charles Stewart.

S. R. No. 170—By Senator Herring: Extending congratulations to Reagan High School football coaches and team members on winning the Texas 4-A State Football Championship.

S. R. No. 171—By Senator Patman: Extending welcome and privileges of the floor for the day to Mrs. Clinton White and her daughters, Sharon and Karen.

S. R. No. 173—By Senators Cole and Grover: Extending welcome to sponsor and students of St. Thomas High School.

S. R. No. 175—By Senator Wilson: Extending welcome and privileges of the floor for the day to David Mann.

S. R. No. 176—By Senator Wilson: Extending welcome to Robert A. Mann.

S. R. No. 177—By Senator Bernal: Extending welcome to elementary school teachers participating in Bilingual Institute at The University of Texas.

S. R. No. 178—By Senator Watson: Extending welcome and privileges of the floor for the day to Dr. Roy Dugger.

S. R. No. 179—By Senator Watson: Extending welcome and privileges of the floor for the day to Bob Wilson.

S. R. No. 180—By Senator Aikin: Extending welcome and privileges of the floor for the day to Clyde Emmons.

S. R. No. 182—By Senator Hazlewood: Extending congratulations to Milton (Buff) Morris on being named "Amarillo Man of the Year."

S. R. No. 184—By Senator Watson: Extending welcome to Richard E. Williams and son, Richard E. Williams, Jr.

Adjournment

Senator Hardeman moved that the Senate stand adjourned until 5:45 o'clock p.m. today.

Senator Schwartz moved that the Senate take recess until 10:30 o'clock a.m. tomorrow.

Question first on the motion to adjourn until 5:45 o'clock p.m. today, "Yeas" and "Nays" were demanded.

The motion prevailed by the following vote:

Yeas—18

Aikin	Hardeman
Bates	Hazlewood
Berry	Herring
Blanchard	Hightower
Christie	Ratliff
Cole	Reagan
Connally	Strong
Creighton	Watson
Hall	Word

Nays—13

Bernal	Mauzy
Brooks	Moore
Grover	Patman
Harrington	Schwartz
Harris	Wade
Jordan	Wilson
Kennard	

Accordingly, the Senate at 5:40 o'clock p.m. adjourned until 5:45 o'clock p.m. today.

In Memory of
Terry Alderson

Senator Creighton offered the following resolution:

(Senate Resolution 163)

Whereas, On March 6, 1968, Terry Alderson gave the last full measure of devotion as a member of the 196th Light Brigade and was killed while engaged in active combat with the enemy in Vietnam; and

Whereas, Terry Alderson was born, lived, attended college and was married in the State that he loved; and

Whereas, Terry Alderson was known and admired by his friends for his keen sense of humor, high sense of honor and his thorough enjoyment of life; and

Whereas, Terry Alderson's only child, a daughter, Angela Dawn, was born after his death; now, therefore, be it

Resolved, That the Senate express heartfelt sympathy to the members of his family: to his wife, Patsy Ann Cowden Alderson of Crane, Texas; to his daughter, Angela Dawn; to his parents, Mr. and Mrs. Ross D. Alderson of Fort Worth; and to his brother, Mr. Larry Alderson of Dallas; and be it further

Resolved, That official copies of this Resolution be prepared for his wife and daughter, his parents and his brother, and that when the Senate adjourns today, it do so in memory of Terry Alderson.

The resolution was read and was adopted by a rising vote of the Senate.

In Memory of
D. Bart Mauzy and
Lee Earl Mauzy

Senator Schwartz offered the following resolution:

(Senate Resolution 172)

Whereas, Our State lost two of its fine and outstanding citizens with the death of David Bartholomew Mauzy and Lee Earl Mauzy on July 16, 1967; and

Whereas, D. Bart Mauzy was born February 20, 1929, in Houston, Texas. He was a graduate of Jefferson Davis High School in Houston, Texas and did his undergraduate work at the University of Houston, receiving his Bachelor of Arts Degree in 1950, and was graduated from the University of Texas Law School in Austin in 1953; and

Whereas, Lee Earl Mauzy was born July 11, 1929, in Houston, Texas. She was a graduate of John H. Reagan High School in Houston, Texas and did her undergraduate work at The University of Houston, receiving both her Bachelor of Arts Degree and her Law Degree from the University of Houston in 1962; and

Whereas, Both D. Bart Mauzy and Lee Earl Mauzy were members of The Houston Bar Association, The State Bar of Texas, The American Bar Association, and other professional groups; and

Whereas, D. Bart Mauzy was the brother of Senator Oscar Mauzy of Dallas County, Texas; and

Whereas, D. Bart Mauzy and Lee Earl Mauzy were married on the 8th day of May, 1954 in Houston, Texas; and

Whereas, They are survived by five sons, Bruce Evan Mauzy, Kevin Patrick Mauzy, Owen Duff Mauzy, Derek Mark Mauzy, and Bart Randolph Mauzy; and

Whereas, D. Bart Mauzy is survived by seven brothers and sisters, namely, Harry L. Mauzy of Houston, Texas; Mildred Mauzy Burdick of Austin, Texas; Anna Mauzy Lassman of Victoria, Texas; Fred K. Mauzy of Houston, Texas; Oscar H. Mauzy of Dallas, Texas; and George L. Mauzy of Corpus Christi, Texas; and

Whereas, Lee Earl Mauzy is survived by her mother, Mrs. Mildred Beardsley of Houston, Texas; and

Whereas, It is the desire of the Senate of Texas to honor the memory of D. Bart Mauzy and Lee Earl Mauzy and to express its sympathy to the surviving members of their family; now, therefore, be it

Resolved by the Senate of the State of Texas, That it does hereby extend sincere sympathy to the family of D. Bart Mauzy and Lee Earl Mauzy; that copies of this Resolution be provided by the Secretary of the Senate, under the seal of the Senate; that a page in the Journal be set aside for this Resolution; and that when the Senate adjourn today, it do so in memory of D. Bart Mauzy and Lee Earl Mauzy.

SCHWARTZ
STRONG
BLANCHARD

Signed—Lieutenant Governor Preston Smith; Aikin, Bates, Bernal, Berry, Brooks, Christie, Cole, Connally, Creighton, Grover, Hall, Hardeman, Harrington, Harris, Hazlewood, Herring, Hightower, Jordan, Kennard, Moore, Patman, Ratliff, Reagan, Wade, Watson, Wilson, Word.

The resolution was read.

On motion of Senator Patman and by unanimous consent the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was then unanimously adopted by a rising vote of the Senate.